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Law and Religion in the Kingdom of Thailand

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**Toward A New Buddhist Constitutionalism:
Law and Religion in the Kingdom of Thailand**

Khemthong Tonsakulrungruang

**A dissertation submitted to the University of Bristol
in accordance with the requirements for award of the degree of
Doctor of Philosophy in the Faculty of Social Sciences and Law
School of Law
October 2019**

95,817 words

Abstract

This thesis offers a comprehensive view of Thai Buddhist constitutionalism, the fundamental theory on state, governance, and law in Buddhist-majority Thailand. Despite a major modernization reform over a century ago, Buddhism remains a powerful ideology of the Thai state. This thesis discusses also how Buddhist constitutionalism interacts with the modern norms of liberal democratic constitutionalism. It discovers two important features of the Thai legal system regarding religions. First, the constitutional system guarantees religious freedom but not religious equality. Second, state accommodation of a religion leads to a loss of autonomy. Thus, although Buddhism is the dominant religion, it is subject to a heavy monitoring scheme that hinders its freedom to operate. The Thai legal system shows that its understanding of human rights is different from the universal standard. This thesis argues that such arrangements are the result of Buddhist constitutionalism. Looking at various sources of contemporary Buddhism debates, the dissertation considers Buddhism's hierarchical socio-political structure with the sacred king at the zenith, Buddhist-infused justice system and the emphasis on the Buddhist-style rule of law, as well as a notion of duty over rights. These traditional ideas clash with liberal democratic constitutionalism, which is characterized by an egalitarian political culture, the sanctity of written law, and the respect of rights and liberties. This dissonance brings tensions and conflicts, both within the religion and with other religious minorities. By exposing these difficulties, the thesis clears the way and makes suggestions for new forms of reconciliation in the constitutional field.

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When I embarked on a Ph.D. journey, I expected solitude but actually found kindness, support, and companionship. First and foremost, I would like to thank my supervisor, Professor Julian Rivers, for his guidance and patience. Many have also contributed to the formation and direction of this dissertation, among those are Nidhi Eowseewong, Thongchai Winichakul, Rupert Gethin, Martin Seeger, Chris Baker, Kasian Tejapira, Andrew Harding, Patrick Jory, Tomas Larsson, Nyi Nyi Kaw, Björn Dressel, and Eugénie Mérieau. I am deeply indebted to them. Last, but not least, I must thank all my birding friends who offer me retreats from this arduous task, especially, Philip Round and John Martin. *Elen sila lumenn omentielvo.*

Author's declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's *Regulations and Code of Practice for Research Degree Programmes* and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED: DATE:

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I. Introduction: A Crossroads between Buddhism and Constitutional Law

A. Research Question: An absence of Buddhist constitutionalism

The assumption that in a modern state religion will eventually retreat into the private sphere or disappear altogether is disproved by the emergence of de-secularization in which religion is regaining its once important role in public life.¹ Across the world, there are increasing numbers of countries that embrace religion as part of public discussion, and several political changes are religiously-inspired. Religion is not always considered an obstruction to the making of the free society, but a commonly held value vital to building one. Thus, the understanding of religion and law at the beginning of the new millennium differs from what had been conventionally held in the second half of the twentieth century.

Thailand is a good example of a modern state that challenges the secularization assumption. Although it has embraced Western political ideas e.g. a nation-state, a written constitution, a democratic form of government and a parliamentary legislative process, the country has heavily engaged Buddhism in its path to modernity. Modern Thailand is, as a result, shaped by two tectonic forces: the universal idea of liberal democratic constitutionalism, and its traditional Buddhist political thought. That is how the Thai legal system has developed – not simply as the result of Western ideas of legal reform adopted over a century ago, but rather as an amalgamation of the new and the old. This is the focus of this study.

This dissertation stands at the crossroads between the field of law and religion and that of comparative constitutional law. It identifies a knowledge gap in the two fields, which it endeavours to fill.

Religion influences law, and different religions influence law in different ways. But the subject of Buddhism and law is significantly understudied in comparison with other major religions. Andrew Huxley once likened the degree of importance of Buddhism to Asian legal cultures to that of the Roman contribution to European legal cultures, yet discussion of the Buddhist legal

¹ Jose Casanova, *Public Religion in the Modern World* (The University of Chicago Press 1994) 3-6.

tradition, especially in contemporary terms, is notably absent.² The topic of Buddhism and politics has been extensively studied but how do current Buddhist political rulers exercise their authority to promulgate and use the law? Existing scholarship on Buddhism and law is insufficient to answer the question. Buddhism is the river less travelled in the field of law and religion.³

One explanation for such absence is that scholars might be looking in the wrong place. In his study on the major legal traditions of the world, H. Patrick Glenn acknowledges that the Buddhist legal tradition has been re-absorbed into the larger, more versatile, Hindu legal tradition, while Confucian legal thinking limits the role of Buddhism in the development of Chinese legal traditions.⁴ It is likely that Buddhism's absence in these two large geographies has led to the conventional misunderstanding that it is an ascetic religion; that it has nothing to do with governance and law.⁵

An increasing number of scholars have become less convinced that is the case. How can we explain the failure of liberal democracy on mainland Southeast Asia, the heartland of Theravada Buddhism? Thailand and her Buddhist neighbours have failed to transplant liberal democratic constitutionalism. This is where Buddhism occupies a prominent presence in the public sphere and where there are violations of rights, systematic discrimination against non-Buddhist minorities as well as a local-style rather authoritarian, rule of law. Surely, there must be an indigenous force at work, resisting and adapting the Western ideals into the local context. This study identifies Buddhism as such a force. This phenomenon contradicts the conventional belief that Buddhism is peaceful, escapist, and ascetic. The conventional view of Buddhist legal theology thus merits reassessment. The void in our knowledge of this subject frustrates some scholars who propose that the study of Buddhist constitutionalism is long overdue.⁶

From the comparative constitutional law point of view, the study of Buddhist constitutionalism offers an opportunity to broaden horizons, by learning about constitutional law beyond just

² Andrew Huxley, 'Buddhist Law' in Herbert M. Kritzer et al (eds) *Legal systems of the World: A Political, Social, and Cultural Encyclopedia* (ABC-CLIO 2002) 205-206.

³ Rex Ahdar, 'Navigating law and religion: familiar waterways, rivers less travelled, and uncharted seas' in Rex Ahdar (ed) *Research Handbook on Law and Religion* (Edward Elgar 2018) 6.

⁴ H. Patrick Glenn, *Legal Traditions of the World* (Oxford University Press, 5th edn. 2014) 289 & 330-332.

⁵ Frank Reynolds, 'Buddhism and Law – Preface' (1995) 18 *Journal of the International Association of Buddhist Studies* 1, 3-4.

⁶ Benjamin Schonthal & Tom Ginsburg, 'Setting an Agenda for the Socio-Legal Study of Contemporary Buddhism' (2016) 3 *Asian Journal of Law and Society* 1, 2-3.

legal theories and interpretation techniques.⁷ Thailand's liberal democratic failure is a classic East-meets-West story where the two worlds collide and ideas are only partially adopted. While the influence of Buddhism in shaping Thai politics is well studied, that of law has long been neglected. The multidisciplinary approach of this dissertation to Thai constitutional law will offer an insight into why Thailand repeatedly fails to implement liberal democratic constitutionalism. It looks at the cultural factors that obstruct the successful transition to democracy. This point has recently gained attention not from law scholars but from a small number of political scientists. Thongchai Winichakul criticizes legal scholars who ignore this problem, that they tend to understand the problem as merely technical, the discrepancy between Common and Civil Law interpretation techniques. Following a very rigid positivistic approach, they simplify the problem while failing to see the cultural problem of a legal transplant.⁸ Thongchai suspects that the real culprit is the rarely mentioned problem of how aspects of traditional culture such as Buddhism affect the application of law. This view is reflected in other socio-political works too.⁹ Ignorance of such dimensions prevents Thailand from overcoming the chronic problem of democratic transition.

This thesis asks two questions. First, what is Buddhist constitutionalism? To ignore the Buddhist influence on Thai legal development is to ignore the elephant in the room. The bigger problem is that no one is certain what that elephant looks like. This is the most fundamental problem that one must address before other questions can be asked. This question responds to the void in the field of Buddhism and law by tracing all relevant accounts of how Thai Buddhism interprets the concept of law, the hierarchy of norms, the relationship between law and public institutions, as well as rights. Secondly, what happens when the traditional notion of Buddhist constitutionalism meets the modern norm of liberal democratic constitutionalism? Clearly, they are incompatible – but how? An answer to the second question may enable us to construct a more democratic synthesis of the two sets of values where Buddhist legal thought welcomes liberal ideas.

⁷ Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) 152-154.

⁸ Thongchai Winichakul, 'บททดลองเสนอ: อภิสิทธิ์ปลอดความผิด (impunity) และความเข้าใจสิทธิมนุษยชนในนิติรัฐแบบไทยๆ' [Proposing Experiment: Impunity Privilege and the Understanding of Human Rights in Thai-Style Legal State] (2016) 14 Same Sky Book 191, 205-207.

⁹ David Streckfuss, *Truth on Trial in Thailand: Defamation, treason, and lese-majeste* (Routledge 2011); Björn Dressel (2018) *Thailand's Traditional Trinity and the Rule of Law: Can They Coexist?* (2018) 42 *Asian Studies Review* 268; Eugénie Mérieau, 'Buddhist Constitutionalism in Thailand: When Rājadharmā Supersedes the Constitution' (2018) 13 *Asian Journal of Comparative Law* 283.

B. Methodology, Scope, and Limit

This thesis sets out to inquire into Thai Buddhist constitutionalism; therefore, it studies Buddhism in its role as a political ideology, which differs from the classical study of canonical Buddhism. It is concerned less with what is written in the Pali canon, the authoritative source, than with what people believe constitutes Buddhism. As a result, it omits some canonical passages which are irrelevant to the purpose of the study but gives more weight to local lore and contemporary sources, which influence Thai perceptions of Buddhism more strongly.

The Kingdom of Thailand is chosen as the prototypical case study for a Buddhist polity, where Buddhism and the monarchy, the two essential elements of political Buddhism, still survive to the present day.¹⁰ Other Theravada countries have faced colonization, military dictatorship, and communism, which have radically and irrevocably altered the nature of their Buddhism and monarchs so much that they are not as suitable for such study.

The limits of this study should be explained beforehand. A common reaction when a Buddhist encounters an unfavorable mention of Buddhism is to label it false. This dissertation will not engage in a debate on the true form of Thai Buddhism. Instead, it adopts a sociological definition. Two elements commonly cited are the Theravada tradition and the official order.

Thai Buddhism belongs to the Southern School of Theravada, which refers to the lineages and traditions that identify themselves as the descendants of the Sri Lankan lineage. Theravada Buddhism is usually presented as the original form compared to the Mahayana and Vajrayana traditions of Buddhism of eastern and central Asia respectively. However, it is doubtful if such a pure form really exists. Theravada conveys the idea of adhering to the Pali canon, in contrast with the Sanskrit canon of Mahayana. But there is little agreement on the actual substance.¹¹ Apart from the historical common root, Thai Buddhism still differs greatly from other Theravada traditions and also within itself since it has mixed with Hindu and local animism. Moreover, many Thais freely visit Mahayana temples, and some teachings of these ‘Theravada’

¹⁰ See Hirschl, *Comparative Matters* 256-260.

¹¹ Analayo, ‘A Note on the Term *Theravada*’ (2013) 30:2 *Buddhist Studies Review* 215, 220.

monks contain Mahayana elements too. It seems that most Thais do not have a clear idea of what is Theravada about Theravada Buddhism.

Nidhi Eowseewong, a distinguished Thai historian, suggests that a unique feature of Thai Buddhism is its long history under the state's control.¹² At present, Sangha law constitutes the official order and the Sangha Council governs it. A term "sangha" is a generic reference to any gathering of monks. But Thai Sangha hereby specifically means the official monastic order of Thai monks. The order has annexed a number of local variants without creating a single distinct orthodoxy. There was a short period of suppression but subsequently these variants flourished again. Practices vary from one individual and temple to another. Besides, Thai Sangha and Thai Buddhism are not the same. There are movements outside the order that must still be considered parts of Thai Buddhism. A considerable portion of Thais follow these movements regardless of their official status, or lack of it.

It is evident that Thai Buddhism is in reality a very complex system of inexplicably great diversity, within which complicated relationships, both friendly and adversarial, are maintained.¹³ Its borders are porous and exchanges with other religious traditions, e.g. Mahayana Buddhism, Hinduism, and animism, occur constantly. Because of such difficulties, Thai Buddhism is best understood as whatever the majority of Thais regard as 'proper' Buddhism, residing within a confined geographical space called Thailand, regardless of the lack of consensus on the substance of that term.

Often, the study of Thai Buddhism encounters two 'families' that shape the general understanding of Thai Buddhism.¹⁴ The first family is 'canonical' Buddhism which emphasizes the canonical sources. It rejects the animistic and Hindu elements in the religion and adopts a more rationalistic doctrinal approach. This is the product of Bangkok's religious reform over a hundred years ago and so became the Buddhism, first, of Bangkokians, originating in the

¹² Interview with Nidhi Eowseewong, Historian (Chiang Mai, 8 April 2019).

¹³ See Francisca Cho & Richard K. Squier, 'Religion as a Complex and Dynamic System' (2013) 81 *Journal of the American Academy of Religion* 357.

¹⁴ Barend Jan Terwiel, *Monks and Magic* (Nordic Institute of Asian Studies, 4th edn, 2012) 2-5; Patrick Jory, 'Thai and Western Buddhist Scholarship in the Age of Colonization: King Chulalongkorn Redefines the Jatakas' (2002) 61 *The Journal of Asian Studies* 891; Peter Jackson, *Buddhism, Legitimation, and Conflicts: the Political Functions of Urban Thai Buddhism* (Institute of Southeast Asian Studies 1989) chapter 3; Charles F. Keyes, Helen Hardacre, & Laurel Kendall 'Introduction: Contested Visions of Community in East and Southeast Asia' in Charles F. Keyes et al (eds), *Asian Visions of Authority: Religion and the Modern States in East and Southeast Asia* (University of Hawaii Press 1994) 4-5.

capital before being disseminated to the rest of the country via state mechanisms. Those most interested in it are the literate upper classes. It is inspired by Western interest in Buddhism, which approaches the subject as a philosophy for life and, therefore, focuses mainly on the text, which from this perspective is considered the true source of Buddhism. Presently, this is the version of Buddhism taught in school. Dhamma which is relevant to daily life is selected, simplified, and incorporated into the curriculum. Most contemporary Buddhist scholars belong to this family.

On the contrary, vernacular Buddhism is the religion of lay people, of plebeian Thais. The main sources of vernacular Buddhism are secondary literature and folklore, which are excluded from the official orthodoxy. These include some well-known literature such as Trai Phum Phra Ruang, Malai Klon Suad, and many Jatakas containing the stories of Buddha's past incarnations. Vernacular Buddhism is syncretic and communal. Locals tend not to practise or observe their faith privately. Their religion was to be told in public, in ceremonial events throughout the year. This was fit for the conditions of ancient Siam where the majority were illiterate. Tipitaka was inscribed into palm leaves and kept in a beautifully decorated sack, and worshipped inside the sacred *vihara*. It was not meant to be read. The main theme was that of *kamma*; that bad deeds bring negative consequences and vice versa. Vernacular Buddhism is sometimes looked down upon by the more literate classes, calling it 'false' Buddhism. However, it is not an either-or situation, but a matter of degree. Religious reforms did not eradicate vernacular Buddhism, and the development of Thai Buddhism has not occurred in a linear manner, from vernacular to rationalistic forms, from traditional to secular, or 'ancient' to 'modern'. These ancient thoughts are deeply rooted in the mind of Thais. Those who condemn false Buddhism often unconsciously adopt it too. A study of Thai Buddhism must examine both families of Thai Buddhism.

Constitutionalism is another ambiguous term. This dissertation narrows it to only liberal democratic constitutionalism. Liberalism in this context implies respect for rights and liberties.¹⁵ Democracy basically requires periodic elections which allow the people to choose and recall their leaders.¹⁶ Lastly, constitutionalism implies respect for law and of the legal order over human arbitrariness.¹⁷ Thus, liberal democratic constitutionalism can be characterised by

¹⁵ Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85 The University of Chicago Law Review 545, 557-558.

¹⁶ *Ibid* 558-559.

¹⁷ *Ibid* 557.

three criteria: first, the country is governed by a government by popular consensus; second, it shows respect for the supremacy of the constitution and other laws; and third, it adopts the belief in universal human rights.¹⁸

The thesis is divided into two main parts. The first concentrates on the constitutional arrangement of Thailand. The second chapter is an introduction to the development of Thai Buddhism. It tracks how over 700 years Buddhism has fostered and become integral to the identity of Thainess. It also traces how the modern Thai state has shaped contemporary Thai Buddhism. In addition to the socio-political context under which Thai Buddhism operates, it introduces some basic concepts of teaching as well as vocabulary. The third and fourth chapters examine religions in the Thai legal system: constitutions, statutes, regulations, and actual policies through the multi-tiered regulatory scheme. It hopes to detect any notable patterns in Thailand's public policies on religions. The following fifth chapter assesses such an arrangement through the lens of public international human rights. It asks whether Thailand's constitutional arrangements for religions is compatible with universal norms. If not, why and how?

The second part is more normative. It looks into the theology behind the three basic ideas of constitutionalism: politics, law, and human rights, which are discussed in the sixth, seventh, and eighth chapters respectively. The objective is to cover all the ideas within Thai Buddhism for and against these concepts. By identifying the role of these ideas in the modern Thai political and legal situation, it hopes to be able to deconstruct conventional beliefs about Thai Buddhism's compatibility with liberal democratic constitutionalism. The final chapter projects forward toward the possibility of creating a new Buddhist constitutionalism that is universal and democratic.

This is a document-based research project. The primary source on Buddhism is the Pali canon, known as *Tipitaka*. However, the Pali canon is not definitive. Few Thais can read the original text, with most digesting passages that have been selected, abridged, and translated into Thai. Thai Buddhism also involves many commentaries and much local lore, which have survived reform and remain influential, for example, Trai Phum Phra Ruang. The writings of selected

¹⁸ Other law and religion scholars seem to converge on this criterion, see Khaled Abou El Fadl, 'Constitutionalism and the Islamic Sunni Legacy' (2001) 1 UCLA Journal of Islamic and Near Eastern Law 67, 68-71.

contemporary thinkers whose voices are considered representative of Thai Buddhism are those of Buddhadasa, P. A. Payutto, and Sulak Sivaraksa, among others. Another important source that reveals the thinking of Thai Buddhism can be found in academic papers: dissertations and individual studies from the monastic universities. This will, of course, be supplemented by academic articles and books both in Buddhist ethics and law. Because of the dynamic nature of the topic, for recent developments and the most updated opinions, this research relies significantly on informal platforms such as academic blog posts and newspapers. On law, this research draws its source from constitutions, statutes, and regulations; the Sangha Council's regulations and resolutions are included. Minutes of drafting, especially that of constitutions, and the House Committee report on Buddhist reform provide important insight. Constitutional and criminal cases help us to understand how these laws work. One note is that there is no official translation of Thai laws into English, although the Council of State sometimes provide 'unofficial' ones. This research prioritizes these 'unofficial' translation by the Council of State unless there is a better alternative.

The topic of Buddhism and the law is highly dynamic. The recent rise of Buddhist fundamentalism in Sri Lanka, Myanmar, and Thailand has revived academic interest. Shortly after this Ph.D. research commenced, new articles were and are still being published, pushing the boundaries and offering new readings on the subject. Another reason is due to Thailand's volatile politics where hyper-conservatism has surged since 2006 resulting in high constitutional turnover. Since politics is shaped greatly by hyper-moralism, each constitutional change takes the state-Buddhism relationship to a more radical path. Lastly, King Bhumibol, regarded by many as the great Buddhist king, passed away in 2016. The ascension of his son, King Vajiralongkorn, has taken Buddhist policies in a new, rather unexpected, direction. There are now several changes being implemented in the Thai Buddhist community after decades of hiatus. New laws and policies are being made at a faster pace. This means that tracking the development of Thai Buddhism from 2015 to 2019 has been very challenging. Finally, in terms of dates, this research focuses on the development of Thai Buddhism since the birth of the modern Thai state in the early 20th century right up to early 2019.

C. Literature Survey

Buddhism is often portrayed as the religion of renouncers, encouraging men to abandon worldly possessions to live in a secluded monastic community. However, Buddha also taught about the good political life and political order. Max Weber's description of Buddhism as a mythical religion that concerns only personal salvation but not good political order is not correct.¹⁹ With political order must come a legal system, however primitive it might be. Also, the history of Thailand suggests that Buddhism has been integrated into every aspect of Thai life. Political leaders always take Buddhism into consideration before formulating public policies. The role of Buddhism in Thai society is, therefore, not only cultural or religious, but also legal and political.

A survey of the key literature reveals significant shortcomings in the knowledge about Buddhism and law. Depending on context, law is an ambiguous word as it can refer to either: (1) the monastic law or *vinaya*, which is an internal code of conduct for monks, (2) the Buddhism-inspired ancient law of Southeast Asia known as *dhammasastra*, or (3) modern secular law. The study of *vinaya* is excluded from the discussion here because of its distance from our interest.²⁰ This shortcoming is especially acute in the area of Buddhism and modern state law compared to the area of Buddhism and ancient law. It seems that many legal scholars are convinced that the role of Buddhism in law-making is a thing of the past that ceased with the introduction of western concepts of law, and they leave such studies to historians. This explains why Buddhism and law is assigned to the branch of legal history, implying its irrelevance to present day business. Besides, from a normative perspective, others consider dhamma the higher, more proper form of law than human-made law, so law is considered a symptom of social illness.²¹ As a consequence, the topic of Buddhism's relationship to modern law never receives the attention it merits.

Robert Lingat was one of the earliest scholars to argue that Siam's dhammasastra, the ancient legal code, is not the same as the original Hindu Law of Manu but the Mon's adaptation encompassing Buddhist elements to impose limits upon the king. Thus, the Siamese legal

¹⁹ Frank E. Reynolds, 'The Two Wheels of Dhamma' in Gananath Obeyesekere et al. (eds.) *The Two Wheels of Dhamma: Essays on the Theravada Tradition in India and Ceylon* (American Academy of Religion 1972) 6-7.

²⁰ See Petra Keefer-Pulz, 'What the Vinayas Can Tell Us about Law' in Rebecca French and Mark Nathan (eds), *Buddhism and Law: An Introduction* (Cambridge University Press 2014); Christine Lammerts, 'Genres and Jurisdictions: Law governing Monastic Inheritance in Seventeenth-Century Burma' in French and Nathan (eds), *Buddhism and Law*.

²¹ P. A. Payutto, นิติศาสตร์แนวพุทธ [Buddhist-style Juridical Science] (Wat Yanaves, 16th edn. 2014) 79.

system was influenced more by Buddhism than by Hinduism.²² This view is widely accepted. However, since Lingat, there has been little development within the Thai legal community building upon his work. Most works by Thai legal historians tend to be descriptive and overlook the Buddhist aspect of the Siamese legal code.²³ Often, their achievements in connecting Buddhism and modern law are limited to only a small area of family and inheritance law.²⁴

Andrew Huxley writes extensively about the ancient Buddhist law of Southeast Asia, particularly Myanmar. He tries to answer more clearly the same question of what is Buddhist about Buddhist law. His works reveal that, contrary to other religiously-inspired laws, these Buddhist laws derive little from the canonical sources; but Buddhism provides the Southeast Asian legal tradition with the inspiration, structure, formula of adjudication, as well as training for lawyers.²⁵ One of his most comprehensive works identifies three sub-groups of Dhammasastra and surmises that the Siamese genre is actually overcome by the royally promulgated law, despite the Buddhist title.²⁶ Similar to other scholars, he is convinced that the Buddhist law tradition has already been lost.²⁷

In recent years, there are signs of growing interest in the study of Buddhism and modern law. Here, law is understood as state legislation. Concern regarding a gap in the study of Buddhism and modern state law has been voiced by Rebecca French,²⁸ and also Benjamin Schonthal and Tom Ginsburg. They agree that the field is much underdeveloped compared to similar fields concerning Islam, Christianity, Hinduism, and Judaism. Ginsburg and Schonthal, in particular, identify the formation of Buddhist constitutionalism as one of the four research agendas for the

²² Robert Lingat, 'Evolution of the Conception of Law in Burma and Siam' (1950) 38 *Journal of Siam Society* 9.

²³ See Sawaeng Boonchalermvipas & Atiruj Tanboonjareon, *ประวัติศาสตร์กฎหมายไทย* [Thai Legal History] (Winyuchon, 8th edn. 2019); Chachapon Jayapon, *ประวัติศาสตร์กฎหมายไทย ภาคก่อนปฏิรูป* [Thai Legal History: Pre-reform] (Winyuchon 2018).

²⁴ Sompong Sucharitkul, 'Thai Law and Buddhist Law' (1998) 46 *American Journal of Comparative Law* 667.

²⁵ See Andrew Huxley, *Buddhist Law*; Buddhist and Law: A View from Mandalay (1995) 18 *Journal of International Association of Buddhist Studies* 47; 'The Tradition of Mahosadha': Legal Reasoning from Northern Thailand' (1997) 60 *Bulletin of the School of Oriental and African Studies, University of London* 315; and 'Pali Buddhist Law in Southeast Asia' in French and Nathan (eds.), *Buddhism and Law*.

²⁶ Andrew Huxley, 'Studying Theravada Legal Literature' (1997) 20 *Journal of the International Association of Buddhist Studies* 63, 73-74.

²⁷ Huxley, *Pali Buddhist Law in Southeast Asia* 181-182.

²⁸ Rebecca French and Mark Nathan, 'Introducing Buddhism and Law' in French and Nathan (eds.), *Buddhism and Law*.

socio-legal study of Buddhism.²⁹ There are signs that scholars are now turning attention to this topic.

The primary concern is the constitutional relationship between the state and Buddhism. In Rebecca French and Mark Nathan's *Buddhism and Law: An Introduction*, although the majority of essays focus on premodern and monastic laws, Whitecross studies Buddhism in the modern constitution of Bhutan.³⁰ He shows how a Buddhist understanding of state and law as well as its long history in this Himalayan country help shaped the 2008 Constitution in both symbolic and substantial ways. He notes the changing state-monastic relationship in the transformative period. In his study of Sri Lanka constitutional law, Benjamin Schonthal himself offers his view of the underlying problem of Buddhist influence on the Sri Lankan Constitution, which has led to religious tension and conflicts.³¹

Schonthal further posits his views on Buddhist constitutionalism that the Buddhist countries of South and Southeast Asia have displayed a tendency to protect the Buddhist heritage in their constitutions.³² However, his work limits itself to only the state-sangha mutual relationship, which is only a part of the whole of Buddhist constitutionalism. Yet there unquestionably remains more to say about the subject.

Other studies focus not upon the constitution but upon specific laws. Tomas Larsson has worked on the election laws of Myanmar, Cambodia, and Thailand to study the disenfranchisement of Buddhist monks.³³ In another work he questions the discrepancy of Thai law in separating the secular and sectarian worlds, which, as a result, bars monks from politics but not from commercial activities.³⁴ These works are important, but still piecemeal.

Thus, the older form of Buddhist law is dead, according to legal historians, and little do we know about the current form of Buddhist constitutionalism. It is said to rely on different aspects

²⁹ Schonthal & Ginsburg, *Setting an Agenda* 6.

³⁰ Richard W. Whitecross, 'Buddhism and Constitutions in Bhutan' in French and Nathan (eds.) *Buddhism and Law*.

³¹ Benjamin Schonthal, *Buddhism, Politics, and the Limit of Law: The Pyrrhic Constitutionalism of Sri Lanka* (Cambridge University Press 2016).

³² Benjamin Schonthal, 'Formations of Buddhist Constitutionalism in South and Southeast Asia' (2017) 15 *International Journal of Constitutional Law* 705.

³³ Tomas Larsson, 'Monkish Politics in Southeast Asia: Religious disenfranchisement in comparative and theoretical perspective' (2015) 49 *Modern Asia Studies* 40.

³⁴ Tomas Larsson, 'Keeping Monks in their Place?', (2016) 3 *Asian Journal of Law and Society* 17.

of Buddhism. There is no longer a Buddhist legal code inspired by monastic legal training or canonical scriptures, but rather it is influenced by Buddhist political and legal ideas. Attempts have been made to learn about the state-sangha relationship in constitutional law as well as the sangha laws, but there remains much to be explored. Hence, the objective of this research: to conduct a systematic, comprehensive, study of Buddhist constitutionalism.

Contrary to the field of Buddhism and law, research on Buddhism and politics is proliferating. There are several studies on the influence of Buddhism on the political arrangement of Thailand and its Theravada neighbours. These studies can be placed into three categories. The first group concerns the philosophical foundations of Buddhist thought on the state. This group usually focuses on canonical and post-canonical Buddhist texts. One of the earliest works is by Balkrishna Govind Gokhale, who examined the development of the state in Buddhist thought, from a contract-like arrangement to one in which the ruling monarch has to subject itself to the guidance of Dhamma.³⁵ According to Gokhale, this development arises from the paradoxical role of the king, who has to strike a delicate balance between observing the Dhamma and exercising his authority to keep peace and order in his kingdom.³⁶ Although Gokhale's work is on ancient India, the idea is applicable to other Buddhist kingdoms, including Thailand.

One of the most foundational studies on the relationship between Buddhism and the state is that of Frank E. Reynolds, who proposes the Two Wheels of Dhamma theory.³⁷ His two wheels of Dhamma theory separates the world into the spiritual and temporal realms. He argues that Buddhism concerns both realms: personal salvation and good political order. Buddhism, therefore, describes its ideal kingship, *dharmaraja*, which drives the temporal wheel in order to advance the spiritual wheel. His account is influential and subsequent studies follow this dichotomy.

The second group of studies explores Buddhism's role in Thailand's socio-political developments. They are often structured in a more or less similar manner. They begin with examining the social and political functions of Buddhism in Thai society before looking more

³⁵ Balkrishna Govind Gokhale, 'The Early Buddhist View of the State' (1969) 89 Journal of the American Oriental Society 731.

³⁶ *Ibid* 736.

³⁷ Reynolds, *The Two Wheels of Dhamma*.

closely at changes in the lay-monastic relationship from the Sukhothai period to around the liberalization period in the 1980s.

Tambiah's classic, *World Conqueror and World Renouncer*, is one of the earliest studies of this kind.³⁸ He follows the classic two-realm dichotomy to look into the interaction between the two. He argues that Weber's understanding of Buddhism is not right and describes how Buddhism, its text and legends, inspires the concept of kingship and political legitimacy in Thailand's history. More interestingly, although he finds that the two realms support each other, there are dialectical tensions and paradoxes within the doctrines with which political leaders have to deal.

The monograph of Yoneo Ishii provides a similar account of Buddhism in the light of political changes in Thai history.³⁹ However, he emphasizes the greater monarchical control of the monastic order, which, as he discovers, evolves as Thailand moves from absolute monarchy to democracy to authoritarianism. He describes how Buddhism is used to integrate and build modern Thailand, but he points out the reactionary movement that employed a regional version of Buddhism as an inspiration too.

Peter A. Jackson identifies two strains of Buddhism: traditional Buddhism that believes in a spiritual cult and determinative karmic system; and reformist-rationalist Buddhism that tries to explain the religion in a modern way.⁴⁰ According to Jackson, the former legitimizes absolute monarchy while the latter justifies democratic processes.⁴¹ He traces the interplay and competition between the two in interpreting the teaching and administration of the monastic order through the state's control of the Sangha, the Sangha laws and amendments, as well as the state's response to the emergence of various schools of Buddhism in Thailand.

Somboon Suksamran is another scholar who has produced a series of works on Thai Buddhism and its socio-political function. Somboon first describes several concepts of Buddhist kingship and the mutual relationship between the political and Buddhist authorities. He then looks at Thailand's policies on Buddhism from the Sukhothai era to modern Bangkok. His works

³⁸ S. J. Tambiah, *World Conqueror and World Renouncer: A Study of Buddhism and Polity in Thailand against a Historical Background* (Cambridge University Press 1976).

³⁹ Yoneo Ishii, *Sangha, State, and Society* (University of Hawaii Press 1986).

⁴⁰ Jackson, *Buddhism, Legitimation, and Conflict* 40-53.

⁴¹ *Ibid* 52.

comprise some of the most comprehensive accounts of the political function of Thai Buddhism.⁴²

The above studies examine the role of Buddhism in nation-building, and ultimately, in democratizing Thailand. Two themes emerge closely intertwined: the making of political hegemony and the control over the sangha, reflecting the ideal mutual relationship many Buddhists firmly believe. However, not all scholars are supportive of such positive perspectives. Duncan McCargo sees Thai Buddhism as an obstruction to democratization. Tracing the political ideology of famous Thai Buddhist philosophers, he concludes that Buddhism has a view of particularism making it the tool for the Thai state to oppress its people and back authoritarian ideas of government.⁴³ His view is in direct contrast with Charles Keys, who argues that Thai Buddhism has a revolutionary significance that helped shape Thai politics.⁴⁴

The third group of writing focuses on political legitimacy, more specifically on the concept of kingship. Drawing from Buddhist canons, legends, myths, and historical evidence, they are quite diverse in their methodology. They explain how the concept of kingship is understood in Southeast Asia. This group might sound historical and outdated in concept. However, as will be shown below, there is on a subconscious level historical continuity to the modern administration.

Barbara Watson Andaya recounts the life of Li Tai, the ancient Siamese king, who successfully reigned over Sukhothai through his Buddhist-inspired policies.⁴⁵ He displayed personal ethics as well as employed Buddhist diplomacy to win over the people and his neighbours. Li Tai came to be known as the first Siamese Dhammaraja, setting an example for others.

Rituals constitute parts of ancient political process. Peter Skilling examines the various concepts of Buddhist kingship in legal and other historical documents as well as in Buddhist

⁴² Somboon Suksamran, 'Buddhism, Political Authority, and Legitimacy in Thailand and Cambodia' in Trevor Ling (ed.) *Buddhist Trends in Southeast Asia* (Institute of Southeast Asia Studies 1993).

⁴³ Duncan McCargo, 'Buddhism, Democracy and Identity in Thailand' (2004) 11 *Democratization* 155.

⁴⁴ Charles F. Keyes, 'Buddhist Politics and Their Revolutionary Origins in Thailand' (1989) 10 *International Political Science Review* 121.

⁴⁵ Barbara Watson Andaya, 'Statecraft in the Reign of Lu Tai of Sukhodaya (ca. 1347-1374)' in Bardwell L. Smith (ed.), *Religion and Legitimation of Power in Thailand, Laos, and Burma* (Anima Publishing 1978).

and Brahmanic rituals.⁴⁶ Christine Gray explores how the royal Kathin ceremony was used to convey the new values from the centre, the King, the military, and Chinese businessmen, to rural Thailand in modern times.⁴⁷ Finally, Patrick Jory studies the concept of *barami*, or perfection, through the cult of the Vessantara legend. Vessantara is the incarnation of Buddha. Jory specifically studies the rituals associated with Vessantara that shape Thais' understanding of monarchy.⁴⁸

The work of Donald Swearer takes a different direction because his study begins with an examination of the myths and legends surrounding Buddhist kingship, supplemented by archaeological evidences from several ancient Southeast Asian empires. He then shows the continuity of the kingship idea by concluding with examples of modern Southeast Asian nations after WWII. The comparative perspective of his work convinces readers that Buddhist kingship is a regional phenomenon.⁴⁹ All of these studies show the complex making of the rightful ruler in the Southeast Asian context. There are rituals, architectures, as well as local literatures that inculcate the Buddhist kingship idea.

Through the work on Buddhism and politics, one can learn much about Buddhism and law. Buddhist politics and law overlap. Political institutions comprise the law-makers and enforcers. Political ideas become the substance of law. Still, there remains much to be researched. Apart from kingship and sangha governance, few studies discuss other important topics, e.g. violence. In recent years, as religious tension in Thailand has risen, Michael K. Jerryson asserts that Buddhism's dominance has helped escalate the conflict in the Muslim-populated Deep South region. Buddhism can act as a symbol of the state's suppression of ethnic difference.⁵⁰ However, his ethnographic work records the reality of the Deep South without providing any theological explanation. Meanwhile, Schonthal's work on Buddhism's intolerance offers a new reading for the canon.⁵¹ This research would like to push the boundary by addressing these oft-overlooked topics too.

⁴⁶ Peter Skilling, 'King, Sangha, and Brahmins' in Ian Harris (ed.) *Buddhism, Power and Political Order* (Routledge 2007).

⁴⁷ Christine Gray, *Thailand: the Soteriological State in the 1970s* (Ph.D., The University of Chicago 1986).

⁴⁸ Patrick Jory, *Thailand's Theory of Monarchy: The Vessantara Jataka and the Idea of the Perfect Man* (State University of New York Press 2016).

⁴⁹ Donald Swearer, *The Buddhist World of Southeast Asia* (2nd edn, State University of New York Press 2010).

⁵⁰ Michael F. Jerryson, *Buddhist Fury: Religion and Violence in Southern Thailand* (Oxford University Press 2011).

⁵¹ Benjamin Schonthal, 'The Toleration of Theravada Buddhism' in Vicki Spencer (ed), *Toleration in Comparative Perspective* (Lexington Books 2017).

This research project, the first comprehensive study of Buddhist constitutionalism, can help towards a more complete understanding of law and politics in the Buddhist kingdom. It is also part of the growing movement to ‘update’ the field of political Buddhism following the publication of the most foundational works in the 1970s and 1980s. It analyses them in the new environment, the more democratic yet also more authoritarian Thailand. Liberal democracy in Thailand has advanced much. More people than ever advocate constitutionalism. Yet fundamentalism has also become more radical. This research will introduce recent Thai scholarship, adding more depth to our current understanding.

D. Research Contribution: Understanding Southeast Asia and its Violence

Without separation of the state and religion, Buddhism remains one of the most powerful political institutions in Thailand. In recent years, Thailand has witnessed Buddhism’s growing influence in law and politics. Buddhist monks have led political demonstrations and government-initiated public policies that favour Buddhist values. This trend has worried religious minorities as well as moderate Buddhists as the state seems to be becoming less tolerant.

Thailand’s experience is not unique. Other Buddhist-dominant countries, Sri Lanka, Myanmar, and Cambodia, have seen the rise of Buddhist fundamentalism too.⁵² Buddhism then incites, or aggravates, religious tensions in these states, sometimes resulting in violence. Myanmar is the extreme example where the Buddhist-majority government endorses atrocities upon Rohingya Muslim in Rakhine. In Sri Lanka, Buddhist national identity helps exclude the Tamil, who are Hindu, from politics. Thailand also faces a Buddhist-Muslim conflict in the Deep South region, which has claimed thousands of lives.

Without understanding Buddhist constitutionalism, no one can understand how laws and politics in these Buddhist-dominant countries are formulated. This research will explain how traditional Buddhist thought influences the modern legal and political system and the consequences for the rights and liberties of citizens. The case of Thailand can help predict

⁵² Charles F. Keyes, ‘Theravada Buddhism and Buddhist Nationalism: Sri Lanka, Myanmar, Cambodia, and Thailand’ (2016) 14 *The Review of Faith & International Affairs* 41.

future conflicts as well as provide examples for other Buddhist-countries to avoid the same pitfalls. Secularization may be unrealistic, but the hope of a moderate Buddhist liberal democracy is not.

II. The Development of Thai Buddhism

How does an Indic religion become an integral part of Southeast Asia? The region is known as the stronghold of Theravada Buddhism, and Thailand has one of the highest percentages of Buddhist population.¹ The answer is through much fostering, co-optation, as well as suppression. Although the present form of Thai Buddhism is largely the product of the religious reform a hundred years ago, its roots go much further beyond the birth of the Thai state. Over seven centuries, Buddhism has become integral to Thailand's identity, distinct and indigenous. The objective of this chapter is to trace that development, which is necessary to conceptualise how Thais understand Thai Buddhism today. One caveat is that this chapter offers a brief outline of a very rich and complex history. It cannot go into the details of some events, which will be discussed in much greater length in later chapters.

According to Thai tradition, the arrival of Buddhism in Southeast Asia is often credited to the story of two monks, Sona and Uttara, commissioned by King Asoka of India to spread the word of Buddha in Suvarnabhumi, as Southeast Asia was then known, in the 3rd century BCE.² The truth is less exciting. Suvarnabhumi had laid down an important trade route that connected India and China, so people on both sides of the Gulf of Bengal had been in contact with one another from prehistoric times. Buddhism may have arrived as early as during Buddha's lifetime in the 5th century BCE.³ It is possible that waves of Indian merchants introduced Indian civilization, both Hinduism and Buddhism, to natives but Buddhism was far more popular for it was not tied to the caste system.⁴ Later, monks would arrive to establish the proper monastic order. Although the exact date is still disputable, archaeological evidence suggests that Buddhism had been established in Suvarnabhumi no later than the first or second century CE.⁵ The western mainland, where the Mon and Pagu Empires were located, was influenced by Theravada Buddhism, while the archipelago and eastern mainland, the Sri Vijaya and Khmer

¹ The Pew Research Center, *The Global Religious Landscape* (The Pew Research Center 2012) 31-32.

² Andrew Skilton, *A Concise History of Buddhism* (2 edn, Windhorse 2003) 155; P. A. Payutto, *Thai Buddhism in the Buddhist World* (9th edn, Pra Buddha Mingmongkol Foundation 2008) 24; Tin Maung Maung Than, 'Sangha Reforms and Renewal of Sasana in Myanmar: Historical Trends and Contemporary Practice' in Ling (ed), *Buddhist Trends in Southeast Asia* 6.

³ Prapod Assavavirulhakarn, *The Ascendancy of Theravada Buddhism in Southeast Asia* (Silkworm Books 2010) 61.

⁴ *Ibid* 56-58.

⁵ *Ibid* 68.

Empires, saw Mahayana become the predominant branch.⁶ In the central plains where Thai settlements would emerge, excavation of the Dvaravati civilization around the 6th century CE confirms that Buddhism had by then become firmly established.⁷ The central plains had first been influenced by Mahayana forms before Theravada took over as the chief influence.

Tai kingdoms emerged around seventh to eighth century CE.⁸ Tai-speaking ethnic groups spread from north and central Vietnam westwards but they only successfully founded their kingdoms, i.e. Lanna, Lanxang, Sukhothai, and Ayutthaya, in what is today Thailand and Laos, between the powerful ancient empires of Mon and Pagan in the west and Khmer in the east.⁹ They soon learnt about Indian civilization from powerful neighbours and became Indianized, a process which thereon distinguished them from their non-Indianized cousins.¹⁰ Even their name, Tai, was changed into the Pali form of Thai.¹¹ Since then, Buddhism was woven into every aspect of Thai life. It was central to the performing of communal rituals and ceremonies as well as inspiring art and literature. It guided people's morality and ethics. More importantly, it formed the basis of political thought which continues to the present day.

A. Buddhism of the Ancient Kingdoms

The official history of Siam, as Thailand was then called, began with the Kingdom of Sukhothai, which gained independence from the Khmer Empire in the thirteenth century CE. The official narrative describes a simplified, linear, story of succession from Sukhothai to Ayutthaya to Thonburi to Bangkok. While it makes following the development easier, it tends to overlook the more complex and diverse reality of the many other Tai kingdoms that would later be subsumed by Bangkok.¹²

⁶ *Ibid* 102-112.

⁷ David Wyatt, *Thailand: a short history* (2nd edn, Yale University Press 2003) 17-20.

⁸ There are several theories, all inconclusive, concerning the origin of the Thai people. Some argue that they migrated, others insist that they had always been here. See Dhida Saraya, *Becoming Thai: The Historical Basis of the Thai Nation* (Muang Boran, 2010) 131-140.

⁹ Wyatt, *Thailand* 15-16.

¹⁰ *Ibid* 17.

¹¹ Chit Phumisak, *ความเป็นมาของคำสยาม ไทย ลาว และขอม และลักษณะทางสังคมของชื่อชนชาติ* [Etymology of the terms Siam, Thai, Lao, and Khom, and the Social Characteristics of Nationalities] (6th edn, Mae Kham Pang 2013) 346.

¹² See Thongchai Winichakul, *โฉมหน้าราชชาตินิยม ว่าด้วยประวัติศาสตร์ไทย* [The Face of Royalist Nationalism: On Thai History] (Same Sky Books 2016) 38-46.

Sukhothai was said to be a paternalistic regime where kings ruled in a fatherly manner; it was an ideal example to which later generations would aspire. Two Sukhothai kings in particular set the standard of the appropriate behaviour for good Buddhist kings for later dynasties to follow. King Ramkhamhaeng the Great (c. 1279 CE) invited an erudite monk from the South to teach Buddhism to his subjects, thus establishing a relationship that would last over 700 years.¹³ According to a stone inscription, the king regularly attended Dhamma sermons. To demonstrate his strong faith, he would let a monk preach from his throne, a symbolical gesture that connected the monarch and Buddhism.¹⁴ However, it was his grandson, Li Tai (1347-1364 CE) who made serious use of Buddhism in political campaigning. His kingdom was losing power to the rising neighbour from the south, the Ayutthaya Kingdom, so he incorporated Buddhism as part of his appeal and to consolidate his legitimacy.¹⁵ He called himself the first Maha Dhamma Raja, that is, the Great Dhamma King. Li Tai was the first king to be ordained, a precedent that has been continued up to the present day.¹⁶ His most important contribution was the book “Trai Phum Phra Ruang” (Three Worlds of King Ruang) which describes the world according to Theravada cosmology. Although his foreword dedicates the work to his mother, it had a profound political impact.¹⁷ According to the Trai Phum universe, gods, men, animals, demons, and other spirits are born into their classes as the consequence of their merit.¹⁸ High merit results in high birth and vice versa, confirming the determinative consequences of kamma and the stratification of social status.¹⁹ Trai Phum thus helped form the patronage system where the higher-born patronized the lower-born in exchange for obedience. At the top sat the king, the noblest of all.²⁰ Duties were set for each class. Such a belief justified the socio-political order of Sukhothai, and subsequent kingdoms, as it endorsed the monarchical rule in light of Buddhist beliefs.²¹ Li Tai's strategy worked for a brief period but Sukhothai was eventually annexed into Ayutthaya in the fifteenth century CE. These ideals and traditions were

¹³ Payutto, *Thai Buddhism* 26-27.

¹⁴ Tambiah, *World Conqueror & World Renouncer* 85.

¹⁵ Andaya, *Statecraft in the Reign of Lu Tai*.

¹⁶ *Ibid* 14-15.

¹⁷ See the introduction in Frank E. Reynolds and Mani B. Reynolds, *The Three Worlds According to King Ruang: A Thai Buddhist Cosmology* (UC Berkeley 1982) 7-11; Craig J. Reynolds, ‘Buddhist Cosmography in Thai History, with Special Reference to Nineteenth-Century Culture Change’ (1976) 35:2 *The Journal of Asian Studies* 203; Choltira Klud-U, ‘ไตรภูมิพระร่วง รากฐานของอุดมการณ์การเมืองไทย’ [Trai Phum Phra Ruang: The Foundation of Thai Political Ideology] (1974) 4 *Thammasart Journal* 106; and Chai-anan Samudavanija & Sombat Thamrongthanyawong, *ความคิดทางการเมืองและสังคมไทย* [Thai Political and Social Ideas] (Bannakij, 1980) 90-105.

¹⁸ Reynolds, *Buddhist Cosmography in Thai History* 204-207.

¹⁹ Reynolds & Reynolds, *The Three Worlds* 11-17.

²⁰ Choltira, *Trai Phum Phra Ruang* 116.

²¹ Peter A. Jackson, ‘Re-Interpreting the Traiphum Phra Ruang: Political Functions of Buddhist Symbolism in Contemporary Thailand’ in Ling, *Buddhist Trends in Southeast Asia* 70-74.

then adopted and mixed with the Hindu concept of divine kingship that Ayutthaya adopted from the Khmer Empire.²²

At the local level, Buddhism relied on nearby lay communities to sustain it. Monks are likened to the fertile field where villagers sow their merit and a monastery offered the opportunity for those wishing to do so, to leave the mundane world.²³ The role of monks went even beyond salvation since they often possessed shamanistic knowledge and power on how to deal with spirits e.g. making amulets, holy water, and praying through sacred chants.²⁴ This is the basis of the monastic-lay mutual relationship. At the top level, Buddhism relied on the patronage of the king.

Under the patronage of the Ayutthayan kings, Buddhism prospered. Yet why did Siamese kings support Buddhism? Ancient Southeast Asian kingdoms were not defined by a fixed territory but were characterized by the concept of *mandala*, a political entity with fluid territory.²⁵ The size of the mandala waxed and waned according to the level of *barami*, or perfection, of each king.²⁶ Barami was not derived from a written law or even bloodline. A king gained barami from a religious source of gaining bun, or merit. A king with higher barami would see his empire expand and vice versa. Fluidity means that two or more empires might overlap, or a vacuum might exist where no king's barami reached. Barami was not static so it had to be maintained constantly.²⁷ He who depleted his barami could be challenged by a more perfect candidate. Even wars between Ayutthaya and other empires were ascribed to the contest of two kings' *barami*, with the loser the less perfect.

As a result, Siamese kings relied heavily on religious legitimacy. They portrayed themselves as a patron, supporting and protecting Buddhism. On the individual and personal level, a king had to appear guided by Buddhist principles. Particularly important is that he must adhere to the ten virtues of the king, *dasavidharajadhamma*, which would help him rule justly and

²² Somboon, Buddhism, *Political Authority, and Legitimacy* 114-115. See a discussion about the two seemingly irreconcilable concepts of kingship: high birth versus merit, in Gray, *Thailand* 10-12 & 106-120.

²³ Ishii, *Sangha, State, and Society* 8-14.

²⁴ *Ibid* 20-24.

²⁵ Prapod, *Ascendancy of Theravada Buddhism* 18-22.

²⁶ Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation* (University of Hawaii Press 1994) 81-82; Jory, *Thailand's Theory of Monarchy* 15-16.

²⁷ Jory, *Thailand's Theory of Monarchy* 18-19.

peacefully.²⁸ He had to care for the sangha. So, temples were built and alms given. Patronage also meant intervention. To avoid schism and maintain the purity of the sangha, a king could give monks instruction and disrobe monks who failed to learn the dhamma and behave accordingly. Buddhism in Ayutthaya prospered so much that a delegation of monks was sent, as requested, by King Songtham to restore Buddhism in Sri Lanka after the Hindu destruction in 1753 CE.²⁹

A more Machiavellian perspective of the royal patronage of Buddhism is that it was for security reasons.³⁰ Another strongman could, at any time, claim religious backing to topple the present king because succession was not strictly hereditary. This rule was evident as the Ayutthayan throne changed hands, there having been over five different dynasties. Monks had to be controlled to ensure that they would not support other lords who may threaten the incumbent ruler.

Ayutthaya was also the period when Siam came into contact with Islam and Christianity. Prior to this period, Muslim settlements were peripheral, Chinese Muslims in the North and Malay in the South.³¹ Persian merchants then arrived in Ayutthaya around 1595-1602 CE,³² with Catholic Europeans arriving soon after in the sixteenth century CE.³³ These religious minorities were welcomed as the Siamese court found their presence beneficial to its economy.³⁴ They were tolerated as a show of the king's *barami*. A residential area was assigned to each group, which lived under the supervision of its own leader.³⁵ Nonetheless, their stays were welcomed only as long as they did not pose a threat to the government. When Ayutthaya aristocrats became suspicious of Catholic influence over King Narai, a coup expelled almost all Christians in 1688 CE.³⁶

²⁸ See Borwornsak Uwanno, 'Ten Principles of a Righteous King and the King of Thailand' (*Thailand Today*) <<http://www.thailandtoday.in.th/monarchy/elibrary/article/167>> accessed 19 September 2019.

²⁹ Ishii, *Sangha, State, and Society* 63-64.

³⁰ Interview with Nidhi Eowseewong.

³¹ Michel Gilquin, *The Muslims of Thailand* (Silkworm 2005) 33-34.

³² *Ibid* 18.

³³ Charles F. Keyes, 'Why the Thais are not Christians: Buddhist and Christian Conversion in Thailand' in Robert Hefner (ed.) *Christian Conversion in Cultural Context* (University of California Press 1993) 269.

³⁴ Yoneo Ishii, 'Thai Muslims and the Royal Patronage of Religion' (1994) 28 *Law & Society Review* 453, 454.

³⁵ *Ibid* 454; Chanvit Kasetsiri, *Discovering Ayutthaya* (6th edn, Toyota Thailand Foundation, 2007) 151-176.

³⁶ Keyes, *Why the Thais are not Christians* 269

The fall of Ayutthaya to the Burmese army in 1767 CE created a brief power vacuum and with it ensuing chaos. One warlord was able to defeat other warring groups and crowned himself King Taksin of Thonburi, the new capital further south toward the river mouth. Among his enemies was the monk-turned-warrior, Phra Fang, who used his spiritual charisma to attract followers and who attempted to claim the temporal throne.³⁷ Here was another example of how a monk could pursue his own ambitions without control. The end of Taksin illustrated another rare example of a temporal king overstepping his authority in the spiritual realm and depleting his merit.³⁸ Taksin claimed that he had attained a beginner's level of enlightenment and so demanded monks to treat him as Buddha.³⁹ Those who refused were punished. His behaviour was considered to be highly disrespectful of the sangha. Rumours circulated that the king had lost his sanity and so a rebellion ensued. Phraya Chakri, his aide, successfully crushed the rebellion but executed Taksin, whose merit had allegedly been lost.⁴⁰ Interestingly, Taksin's background as a Sino-Siamese may have played a critical role in convincing the remaining Ayutthaya aristocrats to topple this estranged king.⁴¹

B. Revival and Reform in the Early Bangkok Era

When Chakri crowned himself King Rama I of Bangkok in 1782, he publicly set the restoration of Buddhism as one of his top priorities.⁴² During the war, temples were burnt and monks misbehaved as authority broke down. Taksin's assertion of control over the sangha did not help either. A new temple was built within the palace to house the Emerald Buddha, which was brought from Vientiane in Laos as the token of Siamese victory over Lan Chang and the palladium of the newly established Bangkok.⁴³ Monks who gave in to Taksin's order were punished whereas those who resisted were rewarded, correcting the wrongful precedent.⁴⁴ Most importantly, King Rama I convened a council of learned monks and scholars to review the

³⁷ Tambiah, *World Conqueror and World Renouncer* 184.

³⁸ *Ibid.*

³⁹ Nidhi Eowseewong, *การเมืองไทยสมัยพระเจ้ากรุงธนบุรี* [Thai politics in the Reign of King Thonburi] (10th edn, Matichon, 2012) 412-422.

⁴⁰ See Ishii, *Sangha, State, and Society* 15.

⁴¹ Nidhi, *King Thonburi* 441-481.

⁴² Wyatt, *Thailand* 129.

⁴³ Swearer, *The Buddhist World of Southeast Asia* 107-109; Frank E. Reynolds, 'The Holy Emerald Jewel: Some Aspects of Buddhist Symbolism and Political Legitimation in Thailand and Laos' in Smith, *Religion and Legitimation of Power*. See the politics of selecting and bringing well-known Buddha statues into Bangkok in Viravarn Naruepiti, *การเมืองเรื่องพระพุทธรูป* [Politics of Buddha Statues] (Matichon 2017).

⁴⁴ Tambiah *World Conqueror and World Renouncer*, 184.

Tipitaka.⁴⁵ He was personally involved as a patron in the project to rebuild orthodoxy, an act of great merit. Once the recension was finished he went on to review the law, signifying the nexus between the temporal law and the transcending law of Buddha. Once political hegemony was restored, Buddhism prospered once more.

From the second half of the 19th century CE, Thai Buddhism underwent the most significant reform, in the formative and defining stage of modern Thai Buddhism. Buddhist kingdoms throughout Asia were facing the threat of colonization. Sri Lanka and Myanmar had already fallen to the British Empire, while the French approached Laos and Cambodia. In addition to the political threat, Siam was intellectually challenged by the arrival once more of Christians whose scientific thought and the resulting advanced technologies questioned Siam's Buddhist worldview.⁴⁶ Hence, the Bangkok ruling class felt the urgent need to modernize Siam and transform it into a nation-state.

Modernization changed the traditional cosmic society into a rational scientific one.⁴⁷ A modern monarch no longer relies on a mythical religious source of legitimacy but on law. A new nation-state would bring all tributary kingdoms under a central authority and bind every subject to a common identity.⁴⁸ A result of this conundrum, of abandoning an obsolete past and building the past anew, is the Buddhist reform under three successive kings. Some old incompatible elements were to be forsaken while the new 'traditions' added.

The religious reforms began with Mongkut, who had been ordained as a monk for 27 years prior to his ascension as King Rama IV (1851-1868). Mongkut the monk was dissatisfied with syncretism in conventional Buddhism so he founded the orthodox sect of *Thammayuttikanikaya*.⁴⁹ *Thammayutthikanikaya* or *Thammayut* would later help spread Mongkut's reinterpretation of Buddhism which abandoned animistic and Hindu elements while insisting on the rationalistic quality of Buddhism.⁵⁰ Mongkut advocated returning to the canon with less focus on rituals. Unfortunately, Mongkut's intervention also led to an enduring and

⁴⁵ *Ibid*, 185-186; Somboon, *Buddhism, Political Authority, and Legitimacy* 120.

⁴⁶ Keys, *Why the Thais are not Christians* 270-271; Jory Thai and *Western Buddhist Scholarship*; Thongchai Winichakul, 'Buddhist Apologetics and a Genealogy of Comparative Religion in Siam' (2015) 62 *NUMEN* 75.

⁴⁷ Keyes *et al*, *Asian Visions of Authority* 4.

⁴⁸ *Ibid*, 5.

⁴⁹ Ishii, *Sangha, State, and Society* 156.

⁵⁰ See Gray, *Thailand* 69-74; Jackson, *Buddhism, Legitimation, and Conflict* 43-45; Somboon, *Buddhism, Political Authority, and Legitimacy* 122.

bitter sectarian fight. Because of its history, the Thammayut sect is always considered elitist, with royal affiliations, while the remaining local variants are lumped into Mahanikaya, the majority but also the less prestigious sect.⁵¹

However, the Buddhist reform did not end with Mongkut. His son, King Chulalongkorn (1868-1910) continued the reforms. Chulalongkorn's project was to build a modern state. Local power, including religious power, had to be centralized.⁵² In parallel with establishing the central bureaucracy, in 1902, Chulalongkorn passed the sangha law that create the official order, the Thai Sangha, under which every monk and temple was brought.⁵³ This was not the first time the king's legislation interfered with the sangha. Rama I had issued *kod mai phra song* [monk law] to regulate the behaviour of monks.⁵⁴ His successors had repeated such efforts, with very limited success. Beyond Bangkok, the local sangha fell under the power of local lords so Bangkok's law was virtually meaningless.⁵⁵ Chulalongkorn's law was the first intended to be enforced throughout the kingdom. Moreover, it did not in substance concern trivialities such as discipline but with restructuring Thai Buddhism itself. His reform helped subjugate local resistance. He successfully suppressed millenarian uprisings in Siam's newly annexed territories.⁵⁶ His policy worked well in the North and Northeast,⁵⁷ but failed in the South where Malay Muslims formed the majority.⁵⁸ The conflict here continues to the present day.

The Sangha employed both carrot and stick to lure, appeal, and coerce local Buddhist offshoots. Ordination became tightly controlled. An eligible preceptor had to get a licence from the Sangha.⁵⁹ At the same time, compliant monks were also awarded honorific titles and salaries.⁶⁰ However, not all went well. Changes were met with local resistance but eventually the Sangha

⁵¹ See Jackson, *Buddhism, Legitimation, and Conflict* 43-47; See Krajang Nuntapothi, มหานิกาย-ธรรมยุต : ความขัดแย้งภายในของคณะสงฆ์ไทย กับ การลี้ภัยอำนาจปกครอง ระหว่างฝ่ายอาณาจักรและฝ่ายศาสนาจักร [Mahanikay-Thammayut: Conflict within Thai Sangha and Enjoying Power between the Kingdom and Buddhism] (Santitham, 1985).

⁵² See in general, Michael Vickery, 'Thai Regional Elites and the Reforms of King Chulalongkorn' (1970) 29 *The Journal of Asian Studies* 863.

⁵³ Ishii, *Sangha, State, and Society* 69-71; The Sangha Act B.E. 2445 (1902).

⁵⁴ Pluem Chotisthayangur, กฎหมายพระสงฆ์ [Laws of Monks] (Mahachulalongkornrajwittayalai 2010) 25-30.

⁵⁵ Ishii, *Sangha, State, and Society* 71-71.

⁵⁶ John B. Murdoch, 'The 1901-1902 "Holy Men's" Rebellion' (1974) 62 *Journal of the Siam Society* 47.

⁵⁷ See Charles F. Keyes, 'Buddhism and National Integration in Thailand' (1971) 30 *The Journal of Asian Studies* 551, 555-559.

⁵⁸ Joseph Chinyong Liow, *Muslim Resistance in Southern Thailand and Southern Philippines: Religion, Ideology, and Politics* (Washington, D.C., The East-West Center, 2006) 25.

⁵⁹ Ishii, *Sangha, State, and Society* 73-74.

⁶⁰ *Ibid* 74-75.

prevailed. Some unorthodox beliefs persisted but at the very least local monks accepted the new hegemony over their local patrons. In this sense, Siam's behaviour was similar to that of other colonial powers in their attempts to control natives.⁶¹ The social implications of Chulalongkorn and his reforms, nevertheless, were that it transformed monks from members of the local community, masters of communal ceremonies, and spiritual advisers into members of a highly organized order whose goal was no longer to serve the community but to study the canon and gain promotion through the official ranks.⁶² This weakened the sangha-laity mutual relationship.

What was the true extent of Mongkut-Chulalongkorn Reform? Mongkut, a rationalist, on his deathbed, refused a visit from Christian doctors and insisted on traditional medicine.⁶³ Eventually he was convinced that his merit had emptied so he had to depart the world. Chulalongkorn, Siam's first modern king, is honoured as the royal Buddha (*Phra Puttha Chao Luang*) for his majesty's great service. In this sense, the sangha reform is just another form of purification a dhammaraja performs to rescue Buddhism in distress.⁶⁴ Nidhi concludes that the reform has replaced Buddhist explanation of science and experience with western scientific rationality. But it does not challenge the religious truth which concerns ideas about authority and legitimation.⁶⁵ Most importantly, the reform's final achievement is to confirm Buddhism's compatibility, and even superiority, among world religions.⁶⁶

The final major step in constructing modern Thai Buddhism was that taken by Chulalongkorn's successor, King Vajiravuth. In 1925, the Oxford-educated king adapted the God, Country, and Queen motto to that of Nation, Religion, and King, the trilogy of what, according to him,

⁶¹ Thongchai, *The Face of Royalist-Nationalism* 32-38.

⁶² Kamala Tiyanich, *Forest Recollection: Wandering Monks in Twentieth-Century Thailand* (University of Hawaii Press 1997) 23-46; Nidhi Eowseewong, พุทธศาสนาในความเปลี่ยนแปลงของสังคมไทย [Buddhism in Thailand's Social Changes] (Komol-Keemthong Foundation, 2000) 85-86; Nidhi Eowseewong, 'ศาสนาในสังคมไทยปัจจุบัน' [Religion in Contemporary Thai Society] in Pokpong Junvith (ed) ปฐกถา 60 ปี เศรษฐศาสตร์ ธรรมศาสตร์ [Keynote Speeches, 60th Anniversary of Faculty of Economics, Thammasat University] (OpenBooks 2011) 102.

⁶³ Thanet Aphornsuwan, 'The West and Siam's Quest for Modernity: Siamese Responses to Nineteenth Century American Missionaries' (2009) 17 Southeast Asian Research 401, 426-238.

⁶⁴ Streckfuss, *Truth on Trial* 79-80.

⁶⁵ Nidhi Eowseewong, ปากไก่และใบเรือ [Pen and Sail] (4th edn, Same Sky Books 2012) 311-325; Nidhi Eowseewong, 'อีกครึ่งที่หายไปของพุทธไทย' [The Missing Half of Thai Buddhism] *Prachatai* (5 October 2018)

<<https://prachatai.com/journal/2018/10/79001>> accessed 19 September 2019. See

⁶⁶ See Thongchai, *Buddhist Apologetics*.

defined Thainess.⁶⁷ Vajiravuth's religion referred specifically to Buddhism.⁶⁸ His definition provided Thais with a common identity that bound all to the newly created political unit known as the Thai state. It strengthened the sense of belonging to one community, the sentiment necessary to unite all against others, in other words, the Christian British and French.

Over the reigns of three able kings, Siam became a modern nation-state bound by a collective sense of national identity under a strong centralized government. Most importantly, it was able to maintain independence. Clearly, Buddhism played an important role in the process and was incorporated into the state's mechanism. In other words, Thailand underwent modernization without secularization.

C. The Revolution and Turbulent Years

Thai Buddhism was greatly challenged in 1932 when absolute monarchy was put to an end by a group of democratic revolutionists. However, the 1932 Revolution was not as radical as it may sound. The People's Party, as the group was called, had no plans to secularize or republicize Siam. Indeed, they faced the reverse challenge that Mongkut had faced. While Mongkut had tried to preserve traditional Siam while appearing modern enough to Western eyes, the People's Party sought to modernize the country without abandoning its traditional roots. Still, the Buddhist king had now become a constitutional monarch, and the duties towards Buddhism were shared with civilian politicians.

One consequence of the 1932 Revolution was the introduction of a new strain of Buddhism: socialist Buddhism. Southeast Asia was then brewing with nationalist movements calling for independence from the imperialist powers. These nationalists aspired to a Buddhist nation with a socialist economic policy.⁶⁹ This sentiment greatly influenced the revolutionists in Siam who experimented with a new interpretation of Buddhist teachings to justify the new political and

⁶⁷ Somboon, *Buddhism, Political Authority, and Legitimacy* 124-125.

⁶⁸ Sat-sa-na has been understood as a 'generic religion' only as early as 1997, see Keyes, *Theravada Buddhism, and Buddhist Nationalism* 47.

⁶⁹ Swearer, *The Buddhist World of Southeast Asia* 109-111; See E. Sarkistanz, *Buddhist Backgrounds of the Burmese Revolution* (Martinus Nijhoff 1965) chapter 16-18; Julianne Schober, 'Colonial Knowledge and Buddhist Education in Burma' in Harris, *Buddhism, Power and Political Order* 51-70; Peter Gyallay-Pap, 'Reconstructing the Cambodian Polity: Buddhism, Kingship, and the Quest for Legitimacy' in Harris, *Buddhism, Power and Political Order* 81-82.

economic order.⁷⁰ Moreover, political liberation inspired liberation within the Sangha. Younger monks protested against discrimination against the non-elitist Mahanikai.⁷¹ The Sangha Act (1902) was replaced by the 1941 law that set a new structure, with the separation of power, and fairer treatment of Mahanikai.⁷² This experiment was, unfortunately, short-lived as the Sangha establishment was upset with the innovation.⁷³ Unfortunately, the democratic system, which fostered the new administration, was itself made very fragile by the strife among factions in the People's Party. The volatile period effectively ended in 1959 when the military, with support from conservatives, staged a coup, ousting Pibun, the last member of the People's Party.⁷⁴ Thailand was plunged into an authoritarian military dictatorship. Field Marshall Sarit Thanarat, the ardent royalist military leader, reintroduced the traditional sangha structure in the 1962 law.⁷⁵

Sarit's Thailand came under the threat of communism. His strategy to counter the movement included promoting the monarchy and Buddhism, calling Thais to unite to guard the two institutions from the atheistic communists. He portrayed himself as a paternalistic leader, high in barami, and the representative of the king.⁷⁶ Even monks were asked to join the fight and non-conformist members were investigated for being communist.⁷⁷ His carrot and stick technique resembled that of the ideal Buddhist ruler. Buddhist involvement in the anti-communist campaign even went as far as one high-profile abbot urging, publicly, the right-winged militia to massacre activist students for the good cause.⁷⁸

With the decline of the threat of communism, the Sangha has also declined. The Sangha's archaic organization and aging members failed to enforce any accountability. Immense wealth,

⁷⁰ See Pridi Banomyong, *ความเป็นอนิจจังของสังคม* [The Impermanence of the Society] (Pridi Banomyong's Institute, 9th edn, 1999).

⁷¹ Jackson, *Buddhism, Legitimation, and Conflict* 71; Ishii, *Sangha, State, and Society* 104-113.

⁷² *Ibid.*, 102-104; The Sangha Act B.E. 2484 (1941).

⁷³ Sunthorn Na-Rangsi, 'Administration of the Thai Sangha: Past, Present and Future' (2002) 1 *The Chulalongkorn Journal of Buddhist Studies* 59, 65-68.

⁷⁴ Kevin Hewison, 'Thailand: Contestation Over Elections, Sovereignty and Representation' (2015) 51 *Representation* 51, 52-54.

⁷⁵ Sunthorn 68-71; The Sangha Act B.E. 2505 (1962).

⁷⁶ Kobkua Suwannathat-Pian, *Kings, Country, and Constitutions: Thailand's Political Development 1932-2000* (Routledge 2003) 11-12.

⁷⁷ Somboon, *Buddhism, Political Authority, and Legitimacy* 130-137. For a fuller account, see Eugene Ford, *Cold War Monks: Buddhism and America's Secret Strategy in Southeast Asia* (Yale University Press 2017).

⁷⁸ Keyes, *Theravada Buddhism and Buddhist Nationalism* 47.

absolute reverence, and weak discipline came with several high-profile scandals.⁷⁹ Monks were reported to be living luxurious lifestyles, breaking vows of celibacy, and committing various crimes, from drug abuse to embezzlement to murder.⁸⁰ One temple was found to be involved in the organized crime of wildlife trafficking.⁸¹ Public faith in the Sangha dropped. Most Thais still remained Buddhist but they did not feel the need to belong to the official order.⁸² At the same time, economic and political liberalization opened up a new space for religious products to satisfy the emerging middle-classes whose concerns were more about worldly success than salvation.⁸³ Some followed celestial monks who they claimed to have blessed their businesses. Others opted for fundamentalist groups that offered an escape from the mundane materialistic world. These alternatives inevitably undermined the Sangha's hegemony. Despite the immense power vested in the Sangha, it failed to contain these budding movements as it was shown to be too incompetent. The problem of competency was exacerbated by deteriorating health of the Sangha Raja, the Supreme Patriarch, since 2004.⁸⁴ The virtual power vacuum left the highly-centralized Sangha in chaos. The sense of crisis would later convince many monks to adopt a radical view on the state-sangha relationship; since 1997, they began campaigning for Buddhism as a state religion which has continued to the present day.⁸⁵

Among the new Buddhist movements, the two most outstanding groups which attracted large numbers were *Santi Asoke* and *Dhammakaya*. *Santi Asoke* was an anti-materialistic, fundamentalist group which was critical of the Sangha's laxity and wealth.⁸⁶ *Santi Asoke's* refusal to accept the Sangha's hegemony led to its expulsion from the order but it was still

⁷⁹ McCargo, *Buddhism, Democracy and Identity* 158; Peter A. Jackson, 'Withering Centre, Flourishing Margins: Buddhism's Changing Political Roles' in Kevin Hewison (ed.) *Political Change in Thailand: Democracy and Participation* (Routledge 2002) 80-83.

⁸⁰ For example, Payutto, *ภัยแห่งพระพุทธศาสนาในประเทศไทย [Danger for Thai Buddhism]* (Buddha Dhamma Foundation 2002), foreword; 'Thai Buddhist Abbot Sentenced to 160 Years for Raping Girls' *Associated Press* (21 June 2004) at <http://www2.irrawaddy.com/article.php?art_id=3568&Submit=Submit> accessed 19 September 2019.

⁸¹ Sharon Guynup, 'Exclusive: Tiger Temple Accused of Supplying Black Market' *National Geographic* (21 January 2016) at <<http://news.nationalgeographic.com/2016/01/160121-tiger-temple-thailand-trafficking-laos0/>> accessed 19 September 2019.

⁸² Jackson, *Withering Centre, Flourishing Margins* 82.

⁸³ *Ibid.*, 83-85; Pasuk Phongpaichit and Chris Baker, *Thailand's Boom!* (Silkworm Books 1996) 127-133; Suwanna Satha-anand, 'Religious Movements in Contemporary Thailand: Buddhist Struggles for Modern Relevance' (1990) 30 *Asian Survey* 395.

⁸⁴ Arnaud Dubus, *Buddhism and Politics in Thailand* (Bangkok: IRASEC, 2017) 12.

⁸⁵ See Suwanna Satha-anand, 'Buddhist Pluralism and Religious Tolerance in Democratizing Thailand' in Philip Cam (ed) *Philosophy, Democracy and Education* (Korean National Commission for UNESCO 2003); McCargo, *Buddhism, Democracy and Identity*; Katewadee Kularbkaew, *The Rise of Thailand's Buddhism Protection Movement* (ISEAS-Yusok Institute, 2019).

⁸⁶ Rory Mackenzie, *New Buddhist Movements in Thailand: Towards an Understanding of Wat Phra Dhammakaya and Santi Asoke* (Routledge 2007) 139-141; Suwanna, *Religious Movements* 404.

allowed to practise. The Sangha tried but failed to eliminate this deviant group.⁸⁷ Dhammakaya, on the contrary, was a pro-materialistic temple which appealed to businesspersons and those who sought worldly success.⁸⁸ Its wealth and rapid expansion provoked a backlash from the public which perceived it as being un-Thai.⁸⁹ This controversial temple was also implicated in a high-profile embezzlement case but its political connections, within the Sangha and with politicians, enabled it to get out of trouble.⁹⁰

D. Democratic Backsliding and the Rise of ‘Khon Dee’ Politics

While the Thai Sangha was plunging into crisis, Thai Buddhism did not. Buddhism’s belief in social and political hierarchy was reflected in the design of the 1997 Constitution. The 1997 Political Reform, whose objective was to consolidate democracy in Thailand, designed a vibrant electoral process with strong guardianship.⁹¹ The 1997 Constitution created the Constitutional Court and other independent watchdog agencies to safeguard parliament from abuses. This guardianship emphasized the importance of unelected, yet morally superior, watchdogs in contrast to the untrustworthy politicians.⁹² Later, these watchdog agencies would contribute to the growth of ‘Good People Politics’ where good people, or *khon dee*, were deemed as being more entitled to rule the uninformed majority.⁹³

The political crisis that triggered *khon dee* politics began in 2005 with anti-government protests. The then-Prime Minister Thaksin Shinawatra was accused of abuse of power and corruption.⁹⁴ In addition, he sparked the Sangha’s fury when he proposed the introduction of a

⁸⁷ Mackenzie, *New Buddhist Movements* 123-127.

⁸⁸ Rachelle M. Scott, *Nirvana for Sale?: Buddhism, Wealth, and the Dhammakaya Temple in Contemporary Thailand* (SUNY Press 2009); Mackenzie, *New Buddhist Movements* 58-64; Suwanna, *Religious Movements* 401-402.

⁸⁹ Nicholas Liusuwan, “Why is Wat Phra Dhammakaya so Controversial?”, *Huffington Post*, 13 June 2016. <http://www.huffingtonpost.com/nicholas-liusuwan/why-is-wat-phra-dhammakay_b_10422798.html> accessed 19 September 2019.

⁹⁰ Scott, *Nirvana for Sale?* 155-156.

⁹¹ Duncan McCargo, ‘Alternative Meanings of Political Reform in Contemporary Thailand’ (1998) 13 *Copenhagen Journal of Asian Studies* 5, 17-18; Kevin Hewison, ‘Thailand’s Conservative Democratization’ in Yin-Wah Chu & Siu-Lun Wong (eds) *East Asia’s New Democracies: Deepening, Reversal, Non-liberal Alternatives* (Routledge 2010) 129; Kevin Hewison, ‘Constitutions, Regimes, and Power in Thailand’ (2007) 14 *Democratization* 928, 932-934; Eugénie Merieau, ‘Thailand’s Deep State. Royal Power and the Constitutional Court (1997-2015)’ (2016) 46 *Journal of Contemporary Asia* 445, 450-453.

⁹² Thongchai Winichakul ‘Toppling Democracy’ (2008) 38 *Journal of Contemporary Asia* 11, 24-30.

⁹³ Merieau, *Thailand’s Deep State* 453-454. The latest in the development is on the eve of the 24th March 2019 General Election, when King Vajiralongkorn issued an announcement encouraging Thais to vote for the good people to rule the country.

⁹⁴ See Kasian Tejapira, ‘Toppling Thaksin’ (2006) 39 *New Left Review* 5.

financial and property audit as well as appointing an acting Supreme Patriarch in place of the Head of the Thai Sangha, who had been too ill to perform his duties.⁹⁵ Like King Thaksin, Thaksin lacked enough *barami* to intervene in the Sangha and so faced a severe backlash as some monks joined the anti-Thaksin movement, mostly from within the royalist conservative upper and middle classes.⁹⁶ Thaksin was portrayed as a demon whose goal was to destroy Thainess: the king and Buddhism. The protest was characterized as a battle between good and evil, and so it became a moral fight where the anti-government protesters were convinced that they were entitled to violate the law and rights for a greater goal. They became known as the Yellow Shirts from their campaign colour.⁹⁷ Regarding Thaksin's supporters, the majority came from the lower middle classes in the provinces in the North and Northeast, and they responded by forming the Red Shirts who argued for equality and self-determination.⁹⁸ The two camps were largely divided along geographical, economic, demographic, as well as ideological lines.⁹⁹ Soon, the Yellow Shirt movement transformed from an anti-Thaksin stance to an anti-democratic one. The Yellow Shirts grew more radical, advocating a hierarchical regime where emphasis was placed on personal morality; that the morally upright individual should enjoy more rights and representation than a corrupt one.¹⁰⁰ This idea strongly reflected the Buddhist political order of Trai Phum Phra Ruang.

Interestingly, a large number of monks joined both colour camps. The fundamentalist Santi Asoke was a key alliance in the anti-Thaksin camp while Dhammakaya, with whom Thaksin had forged a good relationship, sided with the Red Shirts.¹⁰¹ However, there were also many more monks who shared a similar background to that of Thaksin's supporters who also joined the Red Shirt movement.¹⁰² Later, a militant monk, Buddha Isara, entered the scene with an

⁹⁵ Ukrist Pathmanand, 'Nation, Religion, and Monarchy in the Fight Against Thaksin' *New Mandala* (13 August 2008) <<https://www.newmandala.org/nation-religion-and-monarchy-in-the-fight-against-thaksin/>> accessed 19 September 2019.

⁹⁶ Dubus, *Buddhism and Politics* 34-37.

⁹⁷ Michael Nelson, 'Thailand's People's Alliance for Democracy: From 'New Politics' to a 'Real Political Party?' in Marc Askew (ed.) *Legitimacy Crisis in Thailand* (Silkworms Books 2010).

⁹⁸ Kasian Tejapira 'The Irony of Democratization and the Decline of Royal Hegemony in Thailand' (2016) 5 *Southeast Asian Studies* 219, 223-224.

⁹⁹ Naruemon Thabchumpon, 'Contending Political Networks: A Study of the "Yellow Shirts" and "Red Shirts" in Thailand's Politics' (2016) 5 *Southeast Asia Studies* 93; Marc Saxer, *In the Vertigo of Changes: How to Resolve the Political Crisis* (Friedrich Ebert Stiftung 2015) 18-29.

¹⁰⁰ Veerayuth Kanchoochat & Kevin Hewison, 'Introduction: Understanding Thailand's Politics' (2016) 46 *Journal of Contemporary Asia* 371, 374-376.

¹⁰¹ Dubus, *Buddhism and Politics* 54-60; Marja-Leena Heikkilä-Horn, 'Santi Asoke Buddhism and the Occupation of Bangkok International Airport' (2010) 3 *Austrian Journal of South-East Asian Studies* 31.

¹⁰² *Ibid* 37.

inclination to incite violence that made him notorious.¹⁰³ For monks to be sympathizers of both political camps was an unprecedented phenomenon whereby monks openly participated in mundane politics. Monks may have previously been involved in politics but such involvement was discreet and indirect, as they were normally supposed to appear neutral and distant from conflicts.¹⁰⁴

As the conflict progressed, it took a more religious dimension. The 2006 coup was followed by the turbulent period of 2008-2011 when politics was taken over by *khon dee* in the judiciary and watchdog agencies. Claiming the need to maintain the rule of law, these guardians undermined popular consensus by dismissing politicians and revoking major policies.¹⁰⁵ These events culminated in the 2014 coup when the military, under the auspices of the National Council of Peace and Order (NCPO) ousted the government of Yingluck Shinawatra, the youngest sister of Thaksin. The NCPO inherited the beleaguered state of Thai.

In a more recent episode in the development of Thai Buddhism, in 2013, the ailing Supreme Patriarch passed away. The lawful candidate to the vacant position was accused of being an affiliate of the Dhammakaya, leading to strong disapproval from both the anti-Dhammakaya and anti-Thaksin groups.¹⁰⁶ Within the Sangha, there was a growing strong sense of religious nationalism calling for the establishment of Buddhist supremacy, an idea much inspired by the Burmese Sangha which was waging war on Muslim Rohingya.¹⁰⁷ The NCPO announced that it would carry out reforms.¹⁰⁸ The policy may partly have been to appease its conservative nationalist supporters but it may also have been because the unpopular NCPO felt the serious lack of any legitimacy to rule, and so supplemented the democratic deficiency with a religious aura.

¹⁰³ *Ibid* 62-72.

¹⁰⁴ See Nidhi Eowseewong, ‘พระกับการเมือง’ [Monks and Politics] *Matichon Weekly* (1 May 2019)

<https://www.matichonweekly.com/column/article_190046> accessed 19 September 2019; Dubus, *Buddhism and Politics* 19-30; Larsson, *Monkish Politics* 80-81; Larsson, *Keeping Monks in Their Place?* 18-22.

¹⁰⁵ Khemthong Tonsakulrungruang, ‘Entrenching the Minority: The Constitutional Court in Thailand’s Political Conflict’ (2017) 26 Washington International Law Journal 247. Po Jen Yap, *Courts and Democracy in Asia* (Cambridge University Press 2017) chapter 8; Merieau, *Thailand’s Deep State*; Björn Dressel, ‘Judicialization of Politics or Politicization of the Judiciary? Considerations from Recent Events in Thailand’ (2010) 23 The Pacific Review 671.

¹⁰⁶ Dubus, *Buddhism and Politics* 13-15.

¹⁰⁷ See Katewadee, *Thailand’s Buddhism Protection Movement*.

¹⁰⁸ Tomas Larsson, ‘Buddhist Bureaucracy and Religious Freedom in Thailand’ (2018) 33 Journal of Law and Religion 197, 208-211.

The outcome of the NCPO's policy on Thai Buddhism was mixed. On the one hand, the 2017 Constitution¹⁰⁹ gave Thai Buddhism special status, bringing it closer to the full establishment.¹¹⁰ However, this new status resulted in discontent from other religions.¹¹¹ It successfully blocked the nomination of Phra Somdej Maha Ratcha Mungkalajarn, the Supreme Patriarch candidate, and appointed a more neutral Phra Somdej Maha Muneewong. The NCPO mobilized forces to crack down on the controversial Dhammakaya, whose abbot had fled to avoid arrest. Lastly, it amended the Sangha Law to bring the appointment of Sangha Council members under the discretion of the king.¹¹² The change re-strengthened monarchical-monastic relations which monks often argued had been weakened since 1932 and the process of democratization. The change coincided with the ascension of the new king, King Vajiralongkorn, after the passing of his father, King Bhumibol, whom Thais widely regarded as the modern Dhammaraja. On the other hand, the NCPO failed to address the chronic problem of accountability. The plan to introduce transparency and audits in the Sangha faced strong resistance from within, fearing that the lay government was interfering with sacred men's business.¹¹³ Again, the NCPO lacked enough *barami* to intervene in the affairs of the Sangha.

Nevertheless, whereas the NCPO may not be able to introduce accountability for the Sangha, it has been able to restore some sense of order. The crackdown on the Dhammakaya was one example where it successfully dealt with the rogue temple amidst much condemnation from angry monks. More importantly, it made a high-profile arrest of senior abbots for financial corruption and another arrest of Buddha Isara, the militant monk, for lèse majesté.¹¹⁴ Other lesser-known cases of monks who became too vocal or posed too great a security risk were also swiftly dealt with.¹¹⁵ The NCPO appeared to be on good terms with the new Supreme

¹⁰⁹ The 1997 Constitution was abolished by the 2006 coup, which drafted the 2007 Constitution. The 2007 Constitution ended in 2014 but the next constitution was promulgated only in 2017.

¹¹⁰ 2017 Constitution, art. 67; Khemthong Tonsakulrungruang, 'Thailand's Constitution Capitulates to Buddhist Domineering' *East Asia Forum* (24 January 2018) <<https://www.eastasiaforum.org/2018/01/24/thailands-constitution-capitulates-to-buddhist-domineering/>> accessed 19 September 2019.

¹¹¹ The NCPO Order no. 49/2559 (2016) on Measures to Support and Protect Religions in Thailand.

¹¹² The Amendment to the Sangha Act B.E. 2505 (1962) B.E. 2561 (2018).

¹¹³ Katewadee Kularbkeaw, *The Politics of Thai Buddhism under the NCPO Junta* (ISEAS-Yusof Ishak Institute, 2019) 12-17.

¹¹⁴ Khemthong Tonsakulrungruang, 'Purging the Thai Sangha' *New Mandala* (28 May 2018) <<https://www.newmandala.org/ncpos-purge-thai-sangha/>> accessed 19 September 2019.

¹¹⁵ Prawit Rojanaphruk, 'Defrocked Anti-Muslim Buddhist Monk Was 'National Security Threat' *Khao Sod English* (21 September 2017) <<http://www.khaosodenglish.com/news/2017/09/21/defrocked-anti-muslim-buddhist-monk-national-security-threat-prawit/>> accessed 19 September 2019; Nanchanok Wongsamuth, 'พระสมาน ศรีงาม ถูกจับกุมข้อหาแต่งกายเลียนแบบพระ ด้านเจ้าตัวอ้างว่าเหตุที่ถูกจับกุมเพราะ "เคลื่อนไหวทางการเมือง"' [Phra Samarn Sri-Ngam Arrested for Imitating Monks, Claiming the Political Motive] *BBC Thai* (25 April 2019) <<https://www.bbc.com/thai/thailand-48048076>> accessed 19 September 2019.

Patriarch who ordered monks to refrain from making political comments, therefore, restoring the separation of the mundane from the spiritual.¹¹⁶ At least, at the top, the political leader and spiritual leader were working together to move forward the twin traditional wheels of the mundane and the Buddhist worlds. Below, monks of lowly status remain defiant, and resentful of the government's attacks on their fellow monks. They are advocating more political participation e.g. demanding voting rights and backing a Buddhist political party.¹¹⁷ Most importantly, the crisis of the decline in public faith remains a serious issue.

E. Becoming Thai Buddhism

The 700-year development of Thai Buddhism unsurprisingly corresponds to the mainstream Thai historiography, which Thongchai Winichakul describes as royalist nationalistic. This historiography writes of a nation, with a long line of continuity from Sukhothai to Bangkok, which always faced constant threat, from the Burmese, and then the western imperial powers, but which is always saved by very able kings.¹¹⁸ Thai Buddhism is understood in the same way, always under threat, from invasion, from internal disunity, from Christianity, Communism, materialism, Islamic terrorism, and recently, immoral anti-establishment politicians. But it has always been saved, at least up to 1932, by benevolent, pious, Buddhist kings. Thus, Thai Buddhism cannot survive, many are convinced, without state patronage, making Thailand a caesaropapist state.

The notion of *barami*-based political authority remains very strong. Even after the major reforms of over a century ago, traditional political thought remains prevalent among conservative factions. So does traditional legal thought. The Mongkut-Chulalongkorn reforms touched only upon the private aspects of Thai Buddhism; rejecting or reinterpreting supranatural tales; or revising religious ceremonies. The interest in the Pali canon, which Mongkut initiated through the Thammayut order, continues up until the present day, offering spiritual guidance as regards the personal problems of Thais. However, the reforms, and subsequent development, did not modernize the ideas of Thai Buddhism as concern politics

¹¹⁶ ‘มส. ห้ามวัดจัดกิจกรรมการเมือง’ [The Sangha Council Bars Temples from Political Activities] *Thai PBS* (31 August 2018) <<https://news.thaipbs.or.th/content/274335>> accessed 19 September 2019.

¹¹⁷ Nanchanok Wongsamuth, ‘เลือกตั้ง 2562 : พรรคการเมืองเพื่อพุทธศาสนา ใครจะหาทางออกให้สิทธิทางการเมืองของสงฆ์’ [Election 2019: Political Party for Buddhism, Finding Solution to Monks' Political Rights] *BBC Thai* (18 January 2019) <<https://www.bbc.com/thai/thailand-46901485>> accessed 19 September 2019.

¹¹⁸ Thongchai, *The Face of Royalist Nationalism* 25-53.

and law. The reforms themselves are often described as modern. However, scholars revisiting the event now offer a different view. The reforms actually fit the traditional duty of the king to protect and rescue the Sangha when crisis strikes.¹¹⁹ In this light, Mongkut and Chulalongkorn's modernizing attempt was also very traditional, enforcing the Buddhist kingship ideal.

However, those reforms have had a long-lasting impact. Indeed, they were the birth of modern Thai Buddhism. Given its condition at birth, Thai Buddhism is reactive; its identity formed by competition with, first, Christian missionaries who questioned its logic, and later, Islam which required a considerable level of state accommodation. Thai Buddhism may appear tolerant but it will surely ask for the state's intervention should it feel threatened.

The reform is both the point of pride as well as of painful past. Thai Buddhism managed to survive and flourish, but it was forced to embrace new ideas and abandoned the good old time. Throughout this dissertation, works from the Buddhist intelligentsia have been cited which have tried to battle with, and co-opt western ideas into Thai Buddhism. Regrettably, the reforms ossify further development in Thai Buddhism. Much of the present problems with Thai Buddhism can be traced to a century ago.

Another event which influenced Thai Buddhism was the 1932 Revolution. As it forever changed the system of absolute monarchy, many Buddhists believe that it was the beginning of the downfall of Thai Buddhism, regardless of the truth.¹²⁰ Any democratic experiment within the Sangha has thus been seen in a negative light. Socialist Buddhism went extinct as soon as the People's Party collapsed. This resentment contributes significantly to the rise of religious nationalism and the traditional legal authority against the modern liberal democratic constitutionalism the liberal fraction endeavours to install.¹²¹ The interplay between these traditional and modern ideas will be laid out in the following chapters.

¹¹⁹ Streckfuss, *Truth on Trial* 78-80.

¹²⁰ Kukrit Pramoj, วิฤติในพระพุทธศาสนา [Crisis in Buddhism] (Dok Mookh, 2016) 19-26.

¹²¹ Dressel, *Thailand's Traditional Trinity*; Björn Dressel, 'When Notions of Legitimacy Conflict: The Case of Thailand' (2010) 38 *Politics and Policy* 445.

III. Religions in the Thai Legal System: Constitutional Arrangements

As the previous chapter shows, Buddhism has become a key part of the Thai state. With no concept of separation, and little interruption of traditional political authority, the deep entanglement of Buddhism and the state occurs in many areas, including ideology, political structure, as well as in the legal system. Yet how does Buddhism influence law? This chapter explores Buddhism's presence in the Thai legal system. It examines Thailand's legal system in order to learn what the Buddhist-influenced law of a modern Theravada Buddhist country is like. Thailand might have fended off colonization but in so doing it was pressured to modernize the country and its legal system, so this continuity should provide a fine case study of the Theravada legal model.

The focus is on religious governance, that is, on how the state regulates religions. There are other areas of law where Buddhism is also influential, for example, in criminal law, law on gambling, alcohol consumption, or abortion. But the laws governing religious affairs are where Buddhist influence is most conspicuous. This study will look not just at the law on Buddhism, but also the overall policy on religions, as it presumes that Buddhism influences not only the law concerning itself but the law regarding other religions, too.

Benjamin Schonthal recognizes two types of law that concern Buddhists in the Theravada countries of Sri Lanka and mainland Southeast Asia, borne out of reciprocity and tension between the state and Buddhism; the state is supposed to both provide for and discipline Buddhism.¹ The law in a Buddhist country must reflect both duties. The first group of law requires the state to protect the welfare of Buddhism. The second group authorizes the state to oversee monastic issues, such as the administration of organized Buddhist orders, management of properties, and monastic conduct. In other words, they are laws on the accommodation and regulation of Buddhism. The first group is set at the constitutional level while the second is often that of statutes and administrative orders.² Arguably the hierarchical difference implies the priority of the state's policy. Together, they constitute a huge body of law. Due to its sheer size, it is divided into two chapters.

¹ Ben Schonthal, 'The Legal Regulation of Buddhism in Contemporary Sri Lanka' in French & Nathan, *Buddhism and Law* 150.

² *Ibid*, 151.

This chapter covers the first type of Schonthal's dichotomy, but with significant modification. Support and control often come together so the distinction is less clear-cut than described above. This chapter concerns the state's constitutional obligation to Buddhism. It looks at how constitutions design the state's basic relationship with religions, especially with Buddhism. This provides the basis of state accommodation of Buddhism. But the constitution also contains the provision on rights and liberties so the chapter includes discussion of the constitutional guarantee of individual religious freedom.

The ancient kingdom of Siam was a Buddhist kingdom. The 1932 Revolution ended that tradition and replaced the absolute monarchy with a constitutional form of government. Despite the change, the belief in Buddhist legitimation did not wither away. The duty to support and promote Buddhism was subsequently shared between the king and civilian leaders, and is manifested in the Thai constitutional text and political conventions. Another change was that Thailand eventually embraced the concept of religious plurality, with the constitution acknowledging the existence of religious minorities and guaranteeing them basic freedoms. This section thus asks what is the modern-day Thailand's relationship with Buddhism and other religions? How does the state express itself as concerns religion? What role does Buddhism play in public life, state symbols, and elsewhere?

Here, constitutional law encompasses constitutions, relevant laws, as well as conventions. As of May 2019, Thailand has been through 20 'permanent' constitutions, in addition to a few 'interim' ones. This high level of constitutional turnover is caused by an unfinished, ongoing democratic transition where liberal democracy is frequently challenged by traditional authority.³ The consequence is common interference from the military, which represents the elite establishment. As a result, Thailand has experienced constitutions of varying degrees of democracy, interrupted by the interim charters of dictator regimes. This chapter focuses on the permanent ones which address the topics of the head of state, policy guidelines, and religious freedom; the interim charters are often brief and authoritarian in nature so they do not address these concerns. The constitutional changes provide an extremely clear record of the dynamics of the liberal-conservative struggle in the area of religious policies.

³ See Piyabutr Saengkanokkul, รัฐธรรมนูญ ประวัติศาสตร์ข้อความคิด อำนาจสถาปนา และการเปลี่ยนผ่าน [Constitution: Ideological History, Constituent Power, and Transition] (Same Sky Book, 2016); Hewison, *Contestation over Elections*.

A. Head of State

The heart of the state-religion relationship is the king. The ancient Siamese kings reigned as Buddhist kings who provided patronage, support and protection to Buddhism in order to gain the spiritual merit vital to maintaining the throne. The 1932 Revolution witnessed the arrest of several nobles and declared an end to absolute monarchy. King Prajadhipok, who was vacationing at the seaside town of Hua Hin, surrendered. However, the traditional duties of the monarch passed on into a new era. The constitutional monarch has since still been expected to follow the tradition of supporting and protecting Buddhism. His patronage of Buddhism and other religions is not merely symbolic; it has powerful political implications.

The first written constitution was promulgated a few days after the revolution on 27 June 1932. It was minimal in its substance. The People's Party, which drafted the document, did not mention Buddhism at all. It drew up a basic charter that announced the end of the absolute monarchy and boldly claimed that sovereignty belongs to the people. This laid out the new structure of the state according to the principle of the separation of the powers and a bicameral parliament. The People's Party represented a new generation of Thais, technocrats, military and civilians, of non-noble backgrounds and western educated. Many had studied abroad, notably in France. There was little doubt that their constitutional ideas were influenced by these backgrounds and so their regime appeared more secular. As King Prajadhipok felt that his traditional authority was undermined, he refused to sign the Constitution into effect. A compromise was then reached that the king would sign it as a temporary charter, and the People's Party and the king's advisors had to jointly draft a new constitution, which was awarded by the king to the public on 10 December 1932.⁴ This incident changed the bottom-up narrative as described in the previous constitution to a top-down one; the king voluntarily bestowed upon the people the royally promulgated constitution upon popular request.⁵ The tone was less radical. On 10 December, the 1932 Constitution recognized that:

“The King is a Buddhist and an Upholder of Religions (*sasanuphathamphok*).”⁶

⁴ Nakarin Mektrairat, ปฎิวัติสยาม พ.ศ. ๒๔๗๕ [*The Siamese Revolution B.E. 2475*] (5th edn., Same Sky Books, (2010) 319-321.

⁵ Piyabutr, *Constitution* 25-31.

⁶ Thai Constitution B.E. 2475 (1932), art. 4.

Thus, the king must profess Buddhism but he must also uphold religions in general. That he must be Buddhist shows the continuity of the dhammaraja tradition.⁷ More important is the second mandate as the upholder of religions. The original English translation of the term ‘*sasanuphathamphok*’ was the Defender of the Faith but the Constitution Drafting Committee rejected the choice because it would have referred specifically to Buddhism.⁸ Therefore, it is clear that the royal patronage extended beyond Buddhism. The relevant clause is described by Kasian Tejapira as the golden compromise that averts religious tension.⁹ On one hand, it fits the traditional role of the king whose dhamma comes with altruism, forbearance, and uprightness.¹⁰ Since the time of Ayutthaya, these dhammas dictated the kings to allow religious minorities to reside in the kingdom, as long as they did not pose a threat to Buddhism’s dominance.¹¹ On the other hand, it recognizes religious minorities and guarantees their basic freedoms, though not religious equality. This provision has remained in place ever since.

What does it mean to be a Buddhist king? Upon coronation, a new king takes an oath that he is a Buddhist before the Emerald Buddha, which is regarded as the palladium of the kingdom. By law, he has the full authority to appoint monks to various administrative positions in the Sangha, from the Sangha Raja down to local abbots; he grants them honorific titles. Moreover, a new temple must acquire his permission, as well as *sima* to mark the sacred sanctuary. These duties connect monks personally to the king. Apart from these two duties, there are no exact rules on what a king is obligated to perform. However, precedents abound which he is expected to follow. These duties can arguably be considered constitutional conventions. Failing to honour them would result in a serious political backlash despite there being no formal legal sanctions.

Most important is perhaps ordination. This signifies the rite of passage to adulthood, to become a complete man. The long-held tradition since King Li Tai dictates that young princes should be ordained. Most princes spend only a brief period in the monkhood but some stayed on for years or even for life. The most famous is King Mongkut’s son, Prince Vajirayana, who became

⁷ Ishii, *Sangha, State, and Society* 153.

⁸ Prince Wan Waithayakorn, *ประวัติศาสตร์รัฐธรรมนูญไทย ฉบับแรก พ.ศ. 2475 ถึงฉบับปัจจุบัน* [History of Thai Constitutions, from the First 132 to Present] (Prajak, 1972) 30.

⁹ Kasian Tejapira, Professor of Political Science, Thammasat University, personal communication, (16 August 2017).

¹⁰ See Payutto, *Royal Virtues* (Wat Nyanaves 2017) 27-28

¹¹ Ishii, *Thai Muslims* 454-456.

a prince-monk, or Sangha Raja. King Bhumibol had grown up abroad without the opportunity to enter into monkhood and so shortly after his ascension, he took leave to be ordained by the Sangha Raja at the Royal Temple of Wat Borwornniwet.¹² The then Sangha Raja was his preceptor and his mentor later succeeded the supreme patriarchal office.

Beyond ordination, the king may further engage in other activities depending on his personal interests. The most basic task is alms donation. He may adopt a temple under his royal patronage.¹³ A more sophisticated aspect is that of the king being personally involved in the promotion of Buddhism, for example, by composing Buddhist literature, crafting Buddhist arts, ordering a recension of the Tipitaka, or disciplining the sangha.¹⁴ While some activities seem to reflect the king's personal interest in arts and literature, others may have a more political purpose. Buddhist-related literature teaches public morals to the king's subjects and justifies his absolute rule. Kings Mongkut and Chulalongkorn produced a number of works that reinterpreted Buddhist values to conform with the Western worldview as part of their modernization plans for Siam.¹⁵ Their actions reflected the kings' dedication to and proficiency in Buddhism, which greatly enhanced their political legitimacy. In addition, they set an example for ordinary Thais to follow.

As the upholder of religions, the king further engages in supporting and promoting other religions. In the main, support and promotion means aid and attendance. For example, King Bhumibol ordered the translation of the Koran into Thai, to which he personally donated funds; He presided over the Maulid, the celebration of the birth of Prophet Muhammad.¹⁶ He also attended Christian, Hindu, and Sikh functions.¹⁷ However, these functions do not appear compulsory as are the king's obligations to Buddhism, and thus might not be considered part of Thai constitutional convention.

¹² Jutathip Kodprathum and Samruay NakKarnrian (eds) ศาสนาในประเทศไทย [*Religions in Thailand*] (Department of Religious Affairs 2015) 57.

¹³ Department of Religious Affairs, พระอารามหลวง เล่ม 1 [*Royal Temples Vol. I*] (Department of Religious Affairs 2008) 5-7.

¹⁴ Jutathip & Samruay *Religions in Thailand* 58-62.

¹⁵ See Jory, *Thai and Western Buddhist Scholarship*.

¹⁶ Jutathip & Samruay *Religions in Thailand* 63-68; But see a more complicated view especially from the Deep South Muslims at Songsiri Putthongchai, *What is it like to be Muslim in Thailand? A case study of Thailand through Muslim professionals' perspectives*, (PhD. Thesis in Arab and Islamic Studies, University of Exeter, 2013) 59-63.

¹⁷ *Ibid*, 69-75.

B. Symbolism

Closely related to the Head of State is the topic of symbolism, which is not addressed in the constitution but is still a significant constitutional convention. Buddhist symbols are represented in the Thai flag, state ceremonies, the official calendar, as well as constitutional preambles.

The most notable symbol is the flag. King Vajiravuth replaced the traditional flag of Siam, with its white elephant on a plain red background, with a modern tricolour flag. Red, white, and blue, he explained, represent the three pillars of Thainess, that is, the nation, religion, and the monarchy respectively.¹⁸ However, white does not simply mean religion in a generic sense. King Vajiravuth interpreted white as representing the purity of Buddhism, which all Thais are obligated to uphold.¹⁹

Vajiravuth also adopted the Buddhist Era (BE) as Siam's official calendar, making the country one of the very few that do not use the Common Era system. The Buddhist Era commences on the year that Prince Siddhartha became enlightened and turned into the Lord Buddha in 543 BCE. Ancient Siam followed a combination of several different lunar calendars. In 1892, King Chulalongkorn modified the BE calendar by adopting the Gregorian calendar for the days and the months and moving the new year from the first day of the fifth month of the year in the lunar calendar, to the first day of April, which fell roughly around the same period.²⁰ This modification demonstrated his ingenuity in localizing a universal idea. As a result, all official documents, including constitutions and other laws, are dated in BE.²¹ PM Field Marshall Pibunsongkram would later move the New Year to the 1st January to further conform with the universal norm.²² However, he kept the BE system.

Another related topic to the calendar is that of public holidays. Each year, the cabinet announces the dates of public holidays. In addition to the New Year, other holidays are to honour the trilogy of Thainess. These are Songkran (Thai New Year), the Coronation Day, the

¹⁸ Katewadee Kularbkaew, *In Defence of Buddhism: Thai Sangha's Social Movement in the Twenty-First Century* (PhD Thesis, Graduate School of Asia-Pacific Studies, Waseda University, 2013) 47-48.

¹⁹ *Ibid.*, 48.

²⁰ ‘จาก “วันขึ้นปีใหม่” ของสยามประเทศ ถึง “วันปีใหม่” ของประเทศไทย’ [From Siamese New Year to Thai New Year] (*Arts & Culture Magazine*, 14 April 2019) <https://www.silpa-mag.com/culture/article_31123> accessed 18 June 2019.

²¹ The Office of Prime Minister Regulation on Correspondence B.E. 2526 (1983).

²² Royal Declaration on Adopting the 1st of January as New Year B.E. 2483 [1940].

Chakri Day (founding of the ruling dynasty), the King's and Queen's birthday. Then, there are the three Buddhist important days of Visakapuja, Makhapuja, and Asarnhapuja.²³ They fall on the full moon nights of the third, fifth, and eighth months of the lunar calendar respectively. Visakapuja is the day of the Lord Buddha's birth, enlightenment, and death.²⁴ Makhapuja marks his sermon of the four noble truths at the core teaching of Buddhism.²⁵ Asarnhapuja remembers the Lord Buddha's first sermon and the acceptance of his first disciple.²⁶ Because of the discrepancy between the lunar and solar calendar, the dates are not fixed. The cabinet announces the exact dates annually. No important day of other religions, such as Ramadan or Christmas, or even Chinese New Year, are recognized as public holidays in Thailand. There is an exception, though, in the Deep South where Eid al Fitr and Eid al Adha are extra holidays observed to appease the Muslim Malays.²⁷

Most state ceremonies are Buddhist-Brahminical in nature.²⁸ They are the product of Mongkut's reforms when he abandoned those of Brahmanical origins and introduced the Buddhist events. At least, every year, there are the celebrations of the king's and the queen's birthdays, the coronation anniversary, the founding of the Chakri dynasty, the Royal Ploughing Ritual, and the three Buddhist important days, among others. The role of Brahmins is minimal as Buddhism downgrades their status to the servants of the royal court and masters of ceremony, not a superior caste. Some are purely Buddhist, for example, the birthday prayer, or the changing of robes for the Emerald Buddha statue.

One area in which Buddhist symbols are most prominent in the constitution is in its preamble. The 1932 Constitution praises the king who practices the ten royal virtues. The 2017 Constitution addresses the king in his full title, which is in Pali, the *lingua franca* of Theravada Buddhist lands, with all the blessings.²⁹ The date is given in the Buddhist Era. These decorative features sanctify the document. Other laws are dated in BE and refer to the king's full name as well, but in a less grandiose manner.

²³ The Office of Prime Minister Announcement on Public Holidays B.E. 2562 (2019).

²⁴ Kenneth E. Wells, *Thai Buddhism: Its Rites and Activities* (1960) 71-72.

²⁵ *Ibid* 78-79.

²⁶ *Ibid* 168.

²⁷ Pattani, Yala, Narathiwat, and Satun were granted these public holidays by the Cabinet resolution of B.E. 2517 (1974) while Songkla was granted these public holidays in 2013. See the Office of Prime Minister's Regulation on Public Holiday, B.E. 2517. The Cabinet's Resolution 13 August 2013.

²⁸ See Wells, *Thai Buddhism* 229-252.

²⁹ See the translation at http://www.constitutionalcourt.or.th/occ_en/download/article_20170410173022.pdf.

C. Establishment of Buddhism as State Religion

The topic of establishment is highly dynamic, ever-changing as politics becomes less stable. There has always been a call to establish Buddhism as a state religion, but only recently has it intensified and resistance has grown significantly weaker. The rise of the Buddhist establishment movement indicates that a growing number of Thais feel that the guarantee given by the Head of State is no longer adequate. Moreover, as the call coincides with political liberalization, it serves as a reminder of the dark side of democracy where interest groups may abuse their freedom to pursue dangerous agendas.

A decline of public trust in the Sangha in the late 1980s triggered fear among Thais that Buddhism may eventually lose its dominant status, which further developed into the proposal that the state is obligated to protect and oversee the religion.³⁰ Basically, the wish was to strengthen the state-Buddhism relationship, calling the government to do its duty to maintain Buddhism's social status.³¹ In April 1997, as Thailand was preparing the 1997 Constitution, which for the first time allowed greater public participation, a Buddhist advocate group submitted a petition to the Constitution Drafting Committee (CDC) demanding: (1) the state's promotion and protection of Buddhism as state religion, and other religions; (2) the state's promotion of observance and practice of religious principles; and (3) encouragement of religious harmony.³² The group was an *ad hoc* coalition of several famous monks, some were known for being highly intellectual and others for holy celestial power, as well as almost 2,000 religious and social charity organizations.³³ Thus, the controversial petition drew huge media attention and put great pressure on the CDC.

The establishment of Buddhism as a national religion, or state religion, is not uncommon. Cambodia has declared Buddhism the religion of the state.³⁴ Two other countries acknowledge Buddhism's privileged status and demand state promotion and protection. In 1978, the Sri

³⁰ Phra Phaisan Wisalo, พุทธศาสนาไทยในอนาคต แนวโน้มและทางออกจากวิกฤติ [*Thai Buddhism in the Future: Trend and Solution to Crisis*] (2nd edn, Komol-Keemthong Foundation, 2009); Katewadee, *The Rise of Thailand's Buddhism Protection Movement* 2-3.

³¹ Kukrit, *Buddhism in Crisis* 19-26.

³² Boonlert Gajayutthadech, บันทึกส่วนตัว ศ.ส.ร. เบื้องหน้า-เบื้องหลัง กว่าจะเป็นรัฐธรรมนูญฉบับประชาชน [*Personal Memoir of a member of the Constitution Drafting Assembly, the Making of the People's Constitution*] (Amrin Printing 2000) 181-183; Montri Roopsuwan et al, เจตนารมณ์ของรัฐธรรมนูญ [*The Spirit of the Constitution*] (Winyuchon 1999) 103.

³³ Boonlert *Personal Memoir* 180-181.

³⁴ The Constitution of the Kingdom of Cambodia, art. 43.

Lanka Constitution gave Buddhism the foremost place and it bestowed upon the state the duty to protect and foster the Buddha Sasana (religion) while assuring all religions religious freedom.³⁵ (sec 9). Later in 2008, the Constitution of Myanmar employed the same language of recognizing the special position of Buddhism as the faith professed by the great majority of the citizens (sec 361).³⁶ The only Theravada country that does not display special favour to Buddhism is Laos. Bhutan is another country, of the Mahayana school, that recognizes Buddhism as its cultural heritage.³⁷

In 1997, supporters cited the ongoing crisis and the need for state support to reverse the trend. They also pointed out that Buddhism was already the *de facto* state religion so the law should finally reflect this political reality.³⁸ Opponents argued that, as the *de facto* state religion, there was no need to legally endorse it and it risked stirring religious tension.³⁹ Four percent of Thais are Muslim, with the largest concentration in the Deep South, and significant numbers are Christians, Hindus, and Sikhs. According to the opponents of the proposal, although the state accommodated all these religions, it had already allocated a considerable portion of resources to Buddhism; thus, there was no need to establish a state religion.⁴⁰ The debate was sensational, within as well as outside the constitutional assembly.⁴¹ Both sides agreed that Buddhism had received special favours but their conclusions diverged. Finally, the CDC decided to adopt the three demands except the establishment clause in the Chapter on State Policy Guidelines.

“The state shall support and protect Buddhism and other religions, promote good understanding and harmony among followers of every religion, and encourage application of religious teaching for improvement of ethics and quality of life.”⁴²

³⁵ The Constitution of the Democratic Socialist Republic of Sri Lanka, art. 9.

³⁶ The Constitution of the Republic of the Union of Myanmar, art. 361.

³⁷ The Constitution of the Kingdom of Bhutan, art. 3.

³⁸ Boonlert, *Personal Memoir* 192-196. See Payutto, ‘ความสำคัญของพระพุทธศาสนาในฐานะศาสนาประจำชาติ’ [*Importance of Buddhism as the State Religion*] (12th edn, Wat Nyanaves, 2010).

³⁹ Minutes of the Constitution Drafting Assembly, 23rd April 1997, 28-29.

⁴⁰ *Ibid.* 29.

⁴¹ Katewadee, *In Defence of Buddhism* chapter 6; Channarong Boon-noon, ‘ข้อถกเถียงเรื่องพระพุทธศาสนาประจำชาติไทยในรัฐธรรมนูญ: บทวิเคราะห์และข้อสังเกต’ [Debate on Thailand’s National Buddhism in Constitution: Analysis and Observation] in Preedee Hongson and Amporn Marddent (eds), *ศาสนากับความรุนแรง* [Religions and Violence] (Illuminations Editions, 2018).

⁴² Thai Constitution B.E. 2540 (1997), art. 73.

According to the policy, the state was supposed to (1) support and protect Buddhism and other religions, (2) promote good understanding and religious harmony, and (3) encourage religious practices. Every religion was included, though the language was clear in asserting that Buddhism was the first among equals. The special status was implicitly acknowledged without announcing it. Moreover, the state had to take into account the concern of religious harmony. Lastly, the state had to actively accommodate religious belief and practices whenever possible because it was beneficial to people's spiritual and material well-being. Although the policy directive was not legally binding, it was generally considered a fundamental policy with persuasive authority. This religious policy guideline implied a significant shift in Thailand's formal relationship with religions. Prior to 1997, the relationship was rather symbolic. The king was the only person with the traditional duty to uphold Buddhism. The 1997 Constitution officially expanded the duty to the state. It shifted Thailand's stance on religion from rather neutral to very weak establishment.

The 1997 Constitution was abolished by the 2006 coup to oust Prime Minister Thaksin Shinawatra. The coup marked the rise of moral politics which had an effect on Thailand's religious policies for the next decade. The call for to proclaim Buddhism as the state religion returned when the CDC prepared the 2007 Constitution draft. Again, the CDC countered the proposal by citing the pluralistic nature of Thai society, the de facto favourable treatment of Buddhism, and the fear of religious tension. The CDC had a very valid reason for such fears. In 2004, the latest round of Muslim Malay insurgency flared up in the Deep South provinces and claimed thousands of lives. The CDC managed to resist the call for a full establishment. Only a clarification was added; that Buddhism was a religion which the majority of Thais had professed for a long time.⁴³ It justified the patronage on cultural reasons, not religious reasons. This elaboration was part of the original demand back in 1997.

“The state shall support and protect Buddhism which the majority of Thais have followed for a long time and other religions, promote good understanding and harmony among followers of every religion, and encourage application of religious teaching for improvement of ethics and quality of life.”

⁴³ Thai Constitution B.E. 2550 (2007), art. 79.

The 2007 Constitution failed to restore order and democracy. Mass demonstrations kept erupting in 2008, 2009, 2010, and 2013-2014. In 2014, another coup toppled the government of Yingluck Shinawatra, Thaksin's youngest sister, and ended the 2007 Constitution. Buddhist groups once again pressured the CDC to adopt the establishment of Buddhism.

The first draft was released in 2015 and was criticised for being hyper-moralistic.⁴⁴ Although the formal relationship with Buddhism remained unchanged, more religious elements were noticeably incorporated throughout the text. The draft required candidates for political office to be "benevolent and ethical."⁴⁵ Repeatedly, the draft mentioned "benevolent and ethical people" as an essential component of Thai politics. The draft planned to set up the National Moral Assembly to screen the moral standards of candidates to public posts.⁴⁶ The draft also demanded that the Thai people adhere to righteousness.⁴⁷ Wording for the policy directive also differed slightly.

*"The state shall patronize and protect Buddhism, which has long been professed by the majority of Thai, and other religions, promote good understanding and harmony among followers of every religion, and encourage application of religious teaching for improvement of ethics, spirit, and wisdom."*⁴⁸

However, the National Council of Peace and Order (NCPO), as the junta is known, decided to reject the draft at the last minute because it believed that the draft was inadequate to transform the regime into an elected government. Another CDC was appointed and another draft released in early 2016. The requirement for morals or ethics disappeared. Instead, a new duty was introduced.

"The state shall support and protect Buddhism and other religions."

⁴⁴ Duncan McCargo, 'Peopling Thailand's 2015 Draft Constitution', (2015) 37 Contemporary Southeast Asia 329, 336-338.

⁴⁵ Thai Constitution Draft (2015), art. 73.

⁴⁶ *Ibid*, art 74.

⁴⁷ *Ibid*, art. 26 para 2

⁴⁸ *Ibid*, art 80

By supporting and protecting Buddhism, which is a religion professed by the majority of Thais for a long time, the state shall encourage and promote study and dissemination of dhamma of Theravada Buddhism for the development of spirit and wisdom, and provide measures and mechanisms to prevent desecration of Buddhism in whatever forms, and encourage Buddhists to participate in the application of those measures or mechanisms.”⁴⁹

The new policy focuses on patronizing Buddhism and other religions and abandons two other objectives; that of religious harmony and accommodating religious practices. So it appears less pluralistic and more Buddhist-centric than its two predecessors. It elaborates at length the mandate on Buddhism, which is specific only to Theravada Buddhism. Furthermore, it mentions the threat of desecration and the need to prevent it, in whatever form. In general, the new policy is both aggressive and confusing; aggressive because the desecration clause appears militant; confusing because it contains unclear mandates. Theravada Buddhism is a problematic term because the criterion to define Theravada has never been firmly established. There are ongoing debates about the Theravada-Mahayana distinction, the results of which have proven inconclusive.⁵⁰ Within the Thai Theravada school, orthodoxy and orthopraxy are as much diverse as between the two main schools. Besides, although most Thais would identify themselves with Theravada, they find no objection in practicing Mahayana rites. The Mahayana school is officially under the Sangha Council’s jurisdiction. It has received support and protection similar to Theravada. Lastly, no one is certain what the threat of desecration that the CDC mentions is. Many Buddhists agreed that the new provision undermined freedom of religion.⁵¹

The CDC claimed that the change reflected the desire of the public to safeguard Thai Buddhism against desecration.⁵² The overall tone of the policy guideline was no longer accommodating but hostile and protective. The protection is granted only to Theravada school of Buddhism. Despite the term’s doctrinal ambiguity, the CDC insisted that Theravada is the most authentic,

⁴⁹ Thai Constitution B.E. 2562 (2017), art. 67.

⁵⁰ See Analyo, *A Note on the Term Theravada*.

⁵¹ ‘Draft Charter Sabotages Right to Freedom of Religion: academics, Buddhist monks’ (*Prachatai Online Newspaper*, 12 Apr 2016) <<http://prachatai.org/english/node/6036>> accessed by 18 June 2019.

⁵² The Secretariat Office of the House of Representatives, *ความมุ่งหมายและคำอธิบายประกอบร่างมาตราของรัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช 2560* [By-Section Objectives and Explanations of Thai Constitution B.E. 2560] (The Secretariat Office of the House of Representatives 2019) 102.

un-corrupt, form of Buddhism.⁵³ Although the CDC did not specify any threat, be it Muslim insurgency, schism, or secularization, the collateral damage is the heightened religious tension, especially in the Deep South where Muslim Malays constitute the majority. They voted *en masse* against the 2017 Constitution and there was a series of coordinated explosions as a symbolic rejection of this clause.⁵⁴ The NCPO quickly issued an announcement confirming that the state is still committed to supporting and protecting every religion.⁵⁵ However, it also conceded that Theravada deserves greater attention due to its cultural and historical importance. Lastly, it blamed the public discontent on people with ill intentions, distorting the law to incite disunity and sabotage the government. It ended with ordering government agencies to foster religious harmony and monitor the public's religious practices. The NCPO Order 24/2559 has clearly contradicted the constitutional mandate. It confirmed the state's commitment to religious harmony, which the 2017 Constitution had just dropped. It is not clear which mandate overrides which

The new policy is both a symptom of Thailand's unhealthy political and religious situation as well as a harbinger of change. Shortly after the 2014 coup, the military government, with conservative leaning, proposed a reform of the Sangha. The consequence was, in 2015, a new Buddhist bill that would engage the state more closely to the control of orthodoxy and orthopraxy. The bill criminalizes new acts of desecration such as the ordination of an LGBT person or heresy.⁵⁶ A new tribunal would be set up to settle disputes over the right interpretation of dhamma and vinaya.⁵⁷ It allowed larger funding to Buddhism but also introduced audits of monastic finances.⁵⁸ These new measures are seen as promoting and protecting Buddhism at the same time. The downside of the increase in state's promotion and protection is the decrease in the Sangha's autonomy. However, the new Buddhist bill is still being considered in the National Legislative Assembly with no conclusive result.

D. Guarantee of Freedom

⁵³ *Ibid*, 102-103.

⁵⁴ Duncan McCargo, Saowanee T. Alexander, and Petra Desatova, 'Ordering Peace: Thailand's 2016 Constitutional Referendum' (2017) 39 *Contemporary Southeast Asia* 65, 87-89.

⁵⁵ The National Council of Peace and Order, Order No. 49/2559 (2016).

⁵⁶ Larsson, *Keeping Monks in Their Place?* 24.

⁵⁷ 'กฎหมายพุทธศาสนาใหม่ "แดงพระ พระเบี่ยงเบน" อาจติดคุก' [New Buddhist Bill, Amulet Vendor-LGBT Monks might be jailed] *iLaw* (20th February 2015) at < <https://ilaw.or.th/node/3527> > accessed 19 September 2019.

⁵⁸ Larsson, *Keeping Monks in Their Place?* 23-24; Panarat Thepgumpanat & Patpicha Tanakasempipat, 'Thai Junta Seeks to Force Temples to Open Their Finances', *Reuters* (16th June 2017) at <<http://www.reuters.com/article/us-thailand-buddhism-idUSKBN1970WG?il=0>> accessed 19 September 2019.

The last topic set in the constitution concerns not only Buddhism but also religious freedom. In principle, a constitution provides a guarantee to every Thai, Buddhist or not. But the scope of the guarantee waxes and wanes. Besides, it is unclear how the mandate is to be implemented. This section will trace changes in the text and examine some areas where religious freedom is a matter of concern.

(a) Constitutional Guarantees

The first constitution of 17th June 1932 contained no rights provision. This appeared in the next charter of 10th December 1932. Interestingly, the 1932 Constitution guaranteed all other rights, of body, properties, privacy, assembly, and education, among others, in a single section. Freedom of religion was recognized in a separate section, which read as follows:

“A person shall enjoy full liberty to profess a religion or a cult⁵⁹ and liberty to exercise a form of worship in accordance with his belief, provided that it is not contrary to his civic duties, public order or good morals.”⁶⁰

The 1932 Constitution distinguished between the internal freedom of thought and conscience, which was absolute, and the external freedom of observing, practicing, and disseminating a belief, which was subject to civic duties, public order and good morals. Civic duties were listed in the constitution, while public order and good morals was a catch-all phrase. Internal freedom was extended to a belief, such as Taoism, the status of which as a religion was debatable.

The 1932 Constitution also guaranteed equality to all Thais regardless of their religion. This clause has been incorporated in every constitution.⁶¹

The 1949 Constitution amended the Freedom of Religion provision as follows:

⁵⁹ In Thai, the word is ลัทธิ which may refer to a non-religious belief system e.g. socialism, nationalism, or capitalism. But it can also mean a belief system e.g. Taoism, or a cult. There is no accurate translation. Sometimes, it is translated into a creed, which is also inaccurate. Here adopts the term ‘cult’ after the Council of State’s choice of word.

⁶⁰ Thai Constitution (1932), art. 13.

⁶¹ *Ibid*, art. 12.

“A person shall enjoy full liberty to profess a religion, a sect, or a cult, and liberty to exercise a form of worship in accordance to his belief, provided that it is not contrary to his civic duties, public order, and good morals.

In exercising the liberty referred to in the previous paragraph, a person shall be protected from any act of state, which is derogatory to his rights or detrimental to his due benefits on the grounds of professing a religion, a sect, or a cult, or exercising a form of worship in accordance to his different belief from that of others.”⁶²

In 1968, the Constitution prohibited the exercise of any rights, including freedom of religion, to the detriment of the nation, religion, and the monarchy.⁶³ The law reflected the fear of the rise of communism in Thailand. But no subsequent constitution ever adopted the same general prohibition.

The 2007 Constitution expanded the coverage even further:

“A person shall enjoy full liberty to profess a religion, a sect, or a cult, and liberty to exercise a form of worship in accordance to his belief, provided that it is not contrary to his civic duties, public order, and good morals.

In exercising the liberty referred to in paragraph one, a person shall be protected from any act of the State, which is derogatory to his rights or detrimental to his due benefits on the grounds of professing a religion, a sect, or a cult or observing religious precepts or commandments or exercising a form of worship in accordance with his different belief from that of others.”⁶⁴

Until then, each new constitution followed its predecessors’ standard. The trajectory was to keep expanding the protection, going into finer detail. However, the 2017 Constitution states that:

⁶² Thai Constitution B.E. 2492 (1949), art. 27.

⁶³ Thai Constitution B.E. 2521 (1968), art. 45.

⁶⁴ Thai Constitution 2007, art. 37.

*“A person shall enjoy full liberty to profess a religion, and shall enjoy the liberty to exercise or practice a form of worship in accordance with his religious principles, provided that it shall not be adverse to the duties of the Thai people, neither shall it endanger the safety of the State, nor shall it be contrary to public order or good morals.”*⁶⁵

This is a notable, and questionable, departure from long-standing precedent. The scope of protection under the 2017 Constitution is narrower than its predecessors. Internal freedom is limited to religion, omitting sect and cult. External freedom is restricted to worship so personal or private practice is not acknowledged. Moreover, the safety of the state is introduced as another ground for restricting freedom of religion. These changes indicate that the Thai state is becoming more orthodox and less tolerant. It is less inclined to accept non-mainstream groups. Besides, it probably perceives some religious groups as a potential threat and feels the need to control religious activities more tightly.

The civic duties of Thais, which provide the grounds for restriction of religious freedom, are set out in the 2017 Constitution. First and foremost, a person shall protect and uphold the nation, religions, the king and the democratic regime with the king as the head of state.⁶⁶ Thus, the exercise of religious freedom can be compromised if it conflicts with the notion of Thainess, which implies Buddhist dominance.

How is the constitutional guarantee of religious freedom implemented? For a considerably longer period of time, Thailand has been under military-backed authoritarian regimes than civilian democratic ones. Given such a record, it can be expected that the protection of rights is not rigorous. The entire chapter of rights and liberties has not been fully discussed, let alone adjudicated in the court. Even less attention has ever been given to freedom of religion so there is no serious study of scope or depth researching it. Some scholars are critical of the clause's brevity, asserting that it fails to conform with international standards, such as that of ICCPR.⁶⁷ Others point

⁶⁵ Thai Constitution 2017, art. 31.

⁶⁶ *Ibid*, art. 50. More detailed discussion follows in the next chapter.

⁶⁷ David Streckfuss and Mark Templeton, 'Human Rights and Political Reform in Thailand', in Duncan McCargo (ed) *Reforming Thai Politics* (NIAS 2002) 74-75.

out that the state has relentlessly prosecuted non-conformist religious groups.⁶⁸ However, this brevity can be interpreted as providing universal coverage of all spiritually-related topics too. For example, atheism or proselytization are not prohibited so they can be assumed to be legal under constitutional protection. Below, regulations and cases concerning various topics are examined in order to understand the meaning of the freedom of the religion clause and how the level of protection has risen and fallen over the years.

(b) Ensuring Respect for Religion

Thais feel strongly that it is their duty to protect Buddhism from being abused. Stories concerning disrespect for Buddhism make headlines and many Thais react angrily. Buddha statues have become used for decoration, sometimes in places considered sinful or dirty by Buddhist standards, such as pubs or bars where alcohol is sold; Buddha is printed on merchandise, e.g. flip-flops and sneakers⁶⁹ Often, these cases happen abroad. Still, upset Thais pressure the government to act, even beyond its jurisdiction.⁷⁰ Within Thailand, the Ministry of Culture once issued a guide on the dos and don'ts according to Thai culture, including those that concern the Buddha image. It asks tourists to refrain from buying products with Buddha symbols, especially on 'inappropriate' products such as alcohol, underwear, or sexual items.⁷¹ Disrespect of a religious image can lead to prosecution under the Penal Code, although enforcement is uncommon.

Despite some attempts to propose it, there is no law on blasphemy. The Penal Code criminalizes: (1) an act of desecration of an object or a place of worship,⁷² (2) a nuisance or disturbance in a lawful religious assembly, service, or ritual,⁷³ and (3) an impostor of a monk,

⁶⁸ McCargo, *Buddhism, Democracy and Identity* 164-167.

⁶⁹ Laurel Tuohy 'From Tattoos to Toilet Seats, 'Misused' Buddha Images Make Some Blood Boil' (*Coconuts Bangkok*, 27 April 2018) at <<https://coconuts.co/bangkok/features/tattoos-toilet-seats-misused-buddha-images-make-blood-boil/>> accessed by 18 June 2019.

⁷⁰ Richard Ehrlich 'False Idols Upset Crusading Buddhists' *Bangkok Post* (24 March 2013) at <<https://www.bangkokpost.com/thailand/politics/342085/false-idols-upset-crusading-buddhists>> accessed 1 April 2019; 'Thais protest Buddha statue in German art display' *The Nation* (2 July 2013) <<http://www.nationmultimedia.com/national/Thais-protest-Buddha-statue-in-German-art-display-30209553.html>> accessed 1 April 2019.

⁷¹ Human Rights Resource Centre, *Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN* (Human Rights Resource Centre 2015) 494-495.

⁷² Penal Code, sec. 206.

⁷³ *Ibid*, sec. 207.

novice priest, or mendicant.⁷⁴ The objective of these offences is to protect the enjoyment of religious freedom in order to uphold religious harmony.

Formerly, the punishments for these offences were rather light, including imprisonment of no more than two years and a maximum fine of 14,000 THB. Recently, the National Council of Peace and Order overhauled the Penal Code, updating a punishment scheme as a whole. As a result, the fine for religious offences increased ten-fold, to 140,000 THB (3,600 GBP).

Not all inappropriate acts constitute the crime of desecration or nuisance. The revered status of Buddhism nonetheless results in self-censorship. Buddhism is considered a sensitive topic that many artists avoid. There are, though rare, scandals involving paintings or movies that are critical of the Sangha or depict monks in a non-ideal light. In most cases, artists have faced strong protest and eventually chosen to tone down their message.⁷⁵ In the cases of movies, a controversial piece is unlikely to be approved by the Censor Committee. According to the Movie Act, a producer must not product a film which undermines public order and good morals, and which may affect national security or pride.⁷⁶

(c) Rights to Refuse Medical Treatment

A dispute arose between the Christian denomination of the Jehovah's Witnesses and the Medical Council of Thailand. The Jehovah's Witnesses wished to make a statement denying blood transfusions in advance. It claimed that this treatment was contrary to its religious beliefs and so would like to exercise its religious freedom within Thailand. The Medical Council, which represents Thai medical doctors, saw the exercise of such a right being in conflict with a doctor's professional ethics. Refusal to give blood transfusion to a patient might cause death, and prompt a charge of manslaughter. The Council of State advised that, in a case when the condition was non-life threatening, the statement of denial could be honoured as the exercise of religious freedom. If a condition is life-threatening and blood transfusion might save the patient, however, that statement was contrary to public order and good morals. According to the CCC (sec 150), this statement was void. A doctor who honours such a statement will face

⁷⁴ *Ibid*, sec. 208.

⁷⁵ Patrick Brzeski, 'Thailand Bans Local Horror Film Over "Disrespect" to Buddhism' *Hollywood Reporter* (13 October 2015) at <<http://www.hollywoodreporter.com/news/thailand-bans-local-horror-film-831620>> accessed 1 April 2019.

⁷⁶ The Movie and Film Act B.E. 2551 (2008), sec 23.

criminal and disciplinary action.⁷⁷ The case set a boundary for the freedom of religion — that the exercise of such freedom must not jeopardize life, even with consent from that person.

However, since 2007, the National Health Act permits a person to express his will to refuse medical treatment that will only prolong his death, or his will to terminate his sufferance from illness.⁷⁸ The ‘living will’ clause probably overturned the Council of State’s view on the consent for denial of treatment and public order and good morals. Provided that the consent is given in advanced and in writing, a person can practise his religious conviction without the doctor being held liable.

(d) Non-Disclosure of Religious Identity

Thais are required to register for an ID card that contains the personal information of a holder, for example, biometrics, blood type, and residence. This information is compulsory but religion is optional. Religious identity was once problematic because during the period of communist insurgency, state propaganda associated atheism with communism. Not clearly identifying one’s religion was therefore a social taboo; however, this is no longer a stigma. A person may now choose to answer his religion on the card or not without any fear of sanctions.⁷⁹

The ID Card Law also accommodates a person whose religion requires the wearing of a headscarf. In such a case, that person need not take it off, but still must reveal the face in a clearly identifiable manner.⁸⁰

(e) Religious Leave

Ordination used to be considered an important rite of passage to adulthood. Traditionally, a man turning 20 would be ordained for one vassa, or the monsoon season of three months.⁸¹ A modern lifestyle means that a three-month absence for spiritual education is no longer feasible. Many Thais still follow the tradition but at a more flexible time and age. For example, many

⁷⁷ The Council of State Memorandum no 250/2546 (2003).

⁷⁸ The National Health Act B.E. 2550 (2007), sec 12.

⁷⁹ The Identification Card Act B.E. 2526 (amended B.E. 2542) (1999), sec. 7(1).

⁸⁰ The Ministry of Interior Regulation, no 18 B.E. 2542 (1999), sec 5 para 2.

⁸¹ Wells, *Thai Buddhism* 163-164.

Thai university students are ordained during the vacations. For employees, the Labour Code provides no ordination leave so they have to use up their annual leave.

However, the Civil Service Act allows a civil servant, which is the largest class of government employees, to take ordination leave.⁸² Subject to the discretion of his superior, a civil servant who has never been ordained is eligible for up to 120 days of ordination while being paid.⁸³ He may exercise his right once throughout his entire service.

The rule benefits largely Buddhist males. However, a 2007 Cabinet Resolution permits female civil servants to apply for dhamma practice leave.⁸⁴ Dhamma practice is not defined in the Tipitaka. In general, the term encompasses various types of act, ranging from observing the five or eight precepts, to meditation, to living an ascetic life but not ordination. The Sangha does not accept female ordination, known as Bhikkhuni. The cabinet resolution allows female civil servants to go to practise dhamma at one of the accredited dhamma centres, which might not be an official temple. Accreditation is similar to the process of application to build a temple. It is carried out by the National Office of Buddhism (NOB), which makes sure the place is suitable for practising, space- and ideology-wise.⁸⁵ A female civil servant may pick one from the list, and she is eligible to practise for no more than 3 but no less than 1 month.

Ordination leave in the Civil Service Act is written in a gender-neutral style, but tradition dictates that only men are entitled to the benefit. The Cabinet Resolution confers the benefit specifically on female civil servants. The time is more flexible for male employees since there are no minimum requirements. Prior to the Cabinet Resolution, there had already been a program for civil servants, regardless of gender, to attend a dhamma course for 5 to 10 days.⁸⁶ The Cabinet wished to lengthen the course so they set the minimum requirement at one month.

In addition to individual-initiated ordination, the government sometimes encourages ordination for particular purposes. In 2017, for example, as part of the Cremation of King Bhumibol, the Cabinet allowed male civil servants to take an extra 15 days of ordination leave, the merit of

⁸² The Office of Prime Minister Regulation on Leave B.E. 2555 (2012), sec. 29.

⁸³ Royal Decree on Remuneration B.E. 2535, sec. 31.

⁸⁴ The Cabinet Resolution 4 December 2007.

⁸⁵ Office of National Buddhism Announcement on Guideline and Procedure Implementing the Cabinet Resolution on Female Civil Servant Practicing Dhamma at Accredited Dhamma Centres B.E. 2550 (2007).

⁸⁶ The Cabinet Resolution 4 December 2007

which was to be conferred on the late king.⁸⁷ However, such volunteers had to be ordained in one of the organized ceremonies.

Because civil servants comprise the largest class of government employees, this policy has a far-reaching impact. That is, other agencies follow. Employees of public universities, armed forces, and police are now able to apply for ordination leave.⁸⁸

The Civil Service Act also permits Hajj leave.⁸⁹ A Muslim civil servant of either gender may request leave to go on Hajj pilgrimage, with the length being subject to their superior's discretion. There is no equivalent provision for Christianity or other religions.

Interestingly, those that hold political office, at the national and local levels, cannot claim ordination leave. This discrepancy between political and bureaucratic employees is based on the principle that Buddhism should remain distant from politics. A monk is barred from standing for office as an MP or senator, and so ordination will automatically disqualify an MP or senator. The 1952 Local Administration Act disqualifies a member of the local administrative organization (LAO) should he or she become a monk.⁹⁰ Even a traditional funeral ordination, where children of the deceased are ordained for a few hours – a symbolic merit-making gesture – will lead to his dismissal. The Local Administration Act very clearly and stringently separates such affairs regarding religion and state. The law was challenged in the Constitutional Court, but the Court found this restriction did not unduly deprive an individual of religious freedom.⁹¹ The individual's freedom in this case remained intact but when a citizen joins the government, they have to be subject to the government's regulations. The Court mentioned the same restrictions for Members of the House of Representatives and the Senate, both elected by the people. The LAO was also elected, not appointed from the Administrative branch. However, a member of the LAO could be ordained under the ordination program dedicated to King Bhumibol if the program was approved by the Cabinet.⁹²

⁸⁷ 'Cabinet Approves Ordination Leave to Honour Late King' *Bangkok Post* (5 September 2017) at <<https://www.bangkokpost.com/news/general/1318895/cabinet-approves-ordination-leave-to-honour-late-king>> accessed 1 April 2019.

⁸⁸ Office of National Buddhism Announcement 2007.

⁸⁹ OPM Regulation on Leave 2012, sec. 29.

⁹⁰ The Local Administrative Organization Act B.E. 2495, sec. 10.

⁹¹ Const Ct Decision 44/2542 (1999).

⁹² Sup. Admin. Ct. Or 1202/2558 (2015).

(f) Religious Dress Code

Dress code is no small issue in Thailand. The country is obsessed with the notion of unity. Failing to conform with the dress code and standing out from the mass can cause public uproar as the act is perceived as one of disunity. In general, Thailand is moving toward the greater accommodation of religious dress codes. However, some controversies persist.

The Land Traffic Act requires every motorcyclist and passenger to wear a helmet. But an exemption is made for monks, novices, priests, ascetics, or persons whose religion demands head cover.⁹³ In addition to Buddhist monks, the main beneficiaries of this exemption are Sikhs, who wear turbans.

The Muslim headscarf is another matter. Many Muslim women choose not to cover their heads and usually there is no problem. Disputes, however, arise when a person is required to wear a uniform. Historically, the topic generated much resentment, on both sides of Buddhists and Muslims. The head scarf can sometimes stir paranoia and anxiety among Buddhists and can be considered as un-Thai. When Field Marshall Pibun forced Muslim Malays to remove their headscarves as part of his assimilation campaign, the policy understandably upset locals so much and fueled separatist sentiments.⁹⁴

Between 1991-1992, a request from a group of Muslim students at Yala Teacher's College in the Malay Muslim-majority Deep South region, caused a month-long standoff. The students insisted on practising their faith while the local government, who ran the premises, and later on, the central government denied their rights. The standoff sparked wider protests in Bangkok and elsewhere, becoming a proxy battle between Buddhism and Islam.⁹⁵ The key issue at hand was that the headscarf was not part of a uniform. At a deeper level, though, wearing a headscarf on a uniform was seen by Buddhists as an invasion into the Thai space as set by the rigid rules concerning uniforms.⁹⁶ This dispute occurred during a previous spate of Deep South violence

⁹³ The Land Traffic Act B.E. 2522, sec. 122.

⁹⁴ Songsiri, *Muslim in Thailand* 124-125.

⁹⁵ Chaiwat Satha-anand, 'Hijab and Moments of Legitimation: Islamic Resurgence in Thai Society' in Keyes et al, *Asian Visions of Authority* 289-290.

⁹⁶ *Ibid*, 292-293.

and so the authority was extra-sensitive. However, the dispute ended amicably with permission granted after negotiation by the then Education Minister.⁹⁷

Relaxation of the uniform rule came in 2010. The Office of the Cabinet Regulation No. 94 (2553) allows a Muslim civil servant to wear a headscarf of sober colour, long-sleeved shirt, and long skirt or trousers.⁹⁸ Again, the rule had a cascade effect with other agencies following.

Yet the problem has not been fully resolved. There are still sporadic reports of hostility toward headscarf-wearing Muslims. This problem is especially acute when a Muslim tries to attend a public school that is located in or managed by a Buddhist temple. When modern schooling was introduced into Siam, the government was short of teachers. The Sangha helped the government implement the universal basic education by running schools on their premises. One high-profile incident was when a Muslim girl attended a school run by a Buddhist temple in Bangkok's suburb in 2013. She was ordered to leave the school immediately.⁹⁹ The Office of District Education investigated the incident but the results of its findings were never disclosed. More recently, in 2018, a Muslim schoolgirl asked for permission from a kindergarten in the Deep South to wear a hijab. The school is publicly-funded but situated on the land of a Buddhist temple. The Ministry of Education (MOE) Regulation allowed the Muslim student to choose whether to wear a normal uniform or one compatible with Islamic requirements.¹⁰⁰ It also permitted the school to adjust the uniform requirements, but the principal refused to.¹⁰¹ However, the Sangha Council Resolution 2/2554 (2011), from a previous case, ruled that Muslim students must comply with tradition, custom, Thai values, Buddhist values, and the temple's decision.¹⁰² Initially, the government agreed with the girl's plea, seeing it as an opportunity to promote religious harmony in the precarious region.¹⁰³ However, after an angry reaction from many Buddhists, the government wavered. The MOE quickly issued a new regulation which prescribed that Muslim uniform can only be worn upon

⁹⁷ *Ibid.*, 288-289.

⁹⁸ The Office of the Cabinet Regulation No. 94 B.E. 2553 (2010).

⁹⁹ 'A Covering that Bares One's Faith' *Bangkok Post* (14 January 2012) at <<http://www.buddhistchannel.tv/index.php?id=70,10674,0,0,1,0#.Wcg2wdOGPBI>> accessed 1 April 2019. See US Department of States, *Thailand 2013 International Religious Freedom Report* (2014) 7.

¹⁰⁰ The Ministry of Education Regulation on Student Uniform B.E. 2551 (2008) sec 12.

¹⁰¹ *Ibid.*, sec 13.

¹⁰² The Sangha Council Resolution 2/2554 (2011).

¹⁰³ 'เปิดชัดๆ ระเบียบ ศธ. หลังสมาคมผู้ปกครองฯขอศาลปิดดำเนินขงแก้-ปิดช่องสวมฮิญาบ' [Revealed MOE Regulation: After Parents Ask for Rule Change – No More Hijabs] *Isra News Agency* (30 May 2018) at <<https://www.isranews.org/content-page/67-south-slide/66390-rules.html>> accessed 1 April 2019.

agreement between the school and the temple upon whose land the school is located.¹⁰⁴ The new MOE regulation dismisses any opportunity for a Muslim girl to wear a hijab. It defers the decision to each local temple, many of which display negative attitudes toward the Muslim minority. The Muslim student in the case decided to continue wearing the hijab and the principal has continued to discipline her. At the moment, the case is pending in the Administrative Court.

E. Conclusion

The next chapter will explore laws on the regulation of organized religions, Buddhism and others, in a so-called multi-tier regulatory model. This is where discipline and control take place. It provides details of how the state understands and implements the constitutional mandate in this chapter. The two parts should complement each other to portray a comprehensive picture of Thailand's legal relationship with Buddhism, through the constitutional policy and regulation of organized religions, and individual rights.

¹⁰⁴ The Ministry of Education Regulation on Student Uniform (No. 2) B.E. 2561 (2018) Sec 3.

IV. Religions in the Thai Legal System: Regulation of Organized Religions

This section explores the extensive legal scheme that regulates religions in Thailand. Thus, it focuses on the government's measures supporting and controlling religions through statutes and by-laws. Mostly, the section deals with five officially recognized religions: Buddhism, Islam, Christianity, Hinduism, and Sikhism. Statistically, these five religions constitute more than 99 percent of the population.¹ They are placed under the jurisdiction of the Department of Religious Affairs (DRA) with the exception of Buddhism which has its own liaison office.

Thailand always pursues a policy of free exercise under Buddhism's dominance. Since 1932, the state has guaranteed freedom of religion and belief in every constitution. The state generally shows attempts to accommodate religious beliefs and a report of serious discrimination or suppression against a religious minority is rare. Even those of faiths not officially recognized are still free to practise. They are simply not included in the official list and so are ineligible to access state funding. However, the state sets clear priorities in allocating resources. In other words, the state guarantees only religious freedom but not religious equality.² Only five official religions are eligible to receive support and promotion, and of the five, some receive better treatment than others. In effect, Thailand's treatment of religions creates a *de facto* multi-tier regulatory system.³

A multi-tier system is based on how much the state has been engaged in regulating and supporting that religion. Naturally, support comes with control.⁴ The more support a religion receives, the more control it is usually under. The four tiers are a response to the different historical, ethnic, and political backgrounds of the five religions. Buddhism, the sole contender within the first tier, enjoys far superior attention and accommodation from the state. Thus, it is the most heavily regulated as well as promoted. Buddhism is regulated by a statute which delegates administrative power to the Sangha Council, making it an official order to which all Buddhist monks in Thailand are subject. Buddhism also enjoys a variety of subsidies that other religions cannot be compared with. Islam is in the second tier. The Central Islamic Committee

¹ HRRC, *Keeping the Faith* 483.

² Nidhi Eowseewong, 'ศาสนากับรัฐธรรมนูญฉบับวัฒนธรรมไทย' [Religion and Thailand's Cultural Constitution] *Prachatai* (25 February 2015) at <<https://prachatai.com/journal/2015/02/58086>> accessed 1 April 2019.

³ See Jonathan Fox, *Political Secularism, Religion, and the State: A time series analysis of worldwide data* (Cambridge University Press 2015) 51-52.

⁴ *Ibid*, 65-67.

is also delegated from the Islamic Administrative Act and the state significantly accommodates Muslim needs. But still it is incomparable to Buddhism, which is politically and culturally more prominent. The third tier contains Christianity, Hinduism, and Sikhism. They are entitled to subsidy but not regulated by specific statutes. There is no official order. Their churches may register as non-profit legal entities, either as societies or foundations under the Civil and Commercial Code. The fourth tier is that of other religions, cults, or creeds, excluded from the DRA's categorization. These include non-mainstream Buddhist and Christian sects as well as other religions, for example, Judaism. They are neither controlled or encouraged by the state. However, their religious freedom is guaranteed so they can operate freely.

Buddhism and Islam are thus the most heavily controlled while those in the third and fourth tiers receive less attention. In this sense, Buddhism and Islam can be considered more 'public' as the state always regards their management and control as a matter of public affairs, involving state agencies. Religions in the remaining two tiers are more 'private' because the state tends to treat them more like private organizations and rarely do they occupy discussion in the public sphere.

A. Department of Religious Affairs

Perhaps one of the oldest departments, the Department of Religious Affairs (DRA) is said to be traceable back to King Trailok of Ayutthaya (1448-1488 CE).⁵ Initially known as the *Sanghagari* Department, it acted as a point of liaison between the sangha and the palace, a book-keeper of monastic personnel and properties, a sangha police, and an organizer of state ceremonies. When the absolute monarchy ended in 1932, the new government re-assigned the policing role to the Sangha Council, and in 1941, the Sanghagari Department was renamed the DRA, whose responsibility was expanded to cover other religions.⁶ Its roles thus became more facilitative. The re-assignment reflected liberal ideas of pluralism and equality. Still, priority had to be given to Buddhism. In 2002, when the government suggested setting up an inter-religious body, the National Religious Committee, where representatives of all five official religions would convene to make policy on an equal representation basis, Buddhist Thais

⁵ Department of Religious Affairs, กรมการศาสนา [*Department of Religious Affairs*], (Department of Religious Affairs, 2008) 2.

⁶ *Ibid*, 12

heavily opposed the proposal for fear that their dominant status might be put at risk.⁷ To appease the anger, the government created the National Office of Buddhism (NOB) which undertook the book-keeping and liaison duty of Buddhism. Notwithstanding such change, the DRA's principal focus remains on the promotion of Buddhism. As a result, there are two departments overseeing Buddhist affairs.

The DRA's three main objectives are (1) to support and patronize Buddhism and other religions that the government officially recognizes, (2) to promote good understanding and harmony among religions, and (3) to encourage Thais to apply religious principles to improve the quality of their lives.⁸ This language echoes the constitutional mandate from 1997 and its structure is designed accordingly. The DRA's structure is divided into four offices: the Secretariat Office, the Religious Patronage Office, the Hajj Promotion Office, and the Moral Development Office.⁹ The Religious Patronage Office is responsible for most tasks concerning religious affairs. It cooperates with other agencies regarding protocols on royal and state ceremonies, provides support and accommodation to officially recognized religions, arranges cooperation among religious leaders, and promotes the teaching of Buddhism and other religions. The Hajj Promotion Office is authorized by the Hajj Promotion Act to facilitate Muslims who wish to attend the Hajj pilgrimage in Saudi Arabia. The new addition is the Moral Development Office whose mandate is to prepare a plan to develop people's moral standards and present it to the Prime Minister and the Sangha Council. The first National Master Plan for the Promotion of Morals (2016-2021) was introduced in 2016.¹⁰

In principle, the DRA must promote, support, and protect Buddhism and the other four religions. However, its mission statement shows a subtle bias towards Buddhism's superiority. The DRA aims to encourage people to live according to three norms: *kwam-pen-thai* (Thainess), dhamma, and King Bhumibol's philosophy of sufficiency economy so the underlining mission is to reinforce the notion of Nation, Religion, and the King.¹¹ Because the

⁷ Suwanna, *Buddhist Pluralism* 206-207.

⁸ Royal Decree on Organization of the Department of Religious Affairs, the Ministry of Culture B.E. 2557 (2014), sec. 2. [2014 Decree on DRA Organization].

⁹ 2014 Decree on DRA Organization, sec. 3.

¹⁰ Morals Promotion Committee, แผนแม่บทส่งเสริมคุณธรรมแห่งชาติ ฉบับที่ ๑ (พ.ศ. ๒๕๕๙ – ๒๕๖๔) ตามมติคณะรัฐมนตรี เมื่อวันที่ ๑๒ กรกฎาคม ๒๕๕๙ [*The 1st National Master Plan for Promotion of Morals (B.E. 2559-2564) according to Cabinet Resolution 12 July 2016*] (Department of Religious Affairs, 2016).

¹¹ Department of Religious Affairs, แนะนำกรมการศาสนา [*Introduction to DRA*] (Department of Religious Affairs, 2014) 25-26.

DRA must make sure that all religious activities must not contradict or undermine this Thainess trilogy, in effect, Buddhism is privileged. The activities of the DRA can be categorized into the three main groups of (1) Buddhist-oriented activities such as celebrations of Buddhist religious days, the promotion of living according to Buddhist precepts, Buddhist Sunday school programs,¹² (2) Hajj coordination, and (3) other inter-religious activities to promote religious unity, the number and intensity of which are far less superior.¹³ The DRA unsurprisingly allocates the far larger share of its budget to Buddhism, then to Islam.¹⁴ Christianity, Hinduism, and Sikhism receive an even smaller budget. Buddhism also receives an even larger subsidy through the NOB.¹⁵

The most important authority of the DRA is the power to recognize a religious organization. Without recognition, that religious body will not be able to access governmental assistance, for example, in issuing a permit for its missionaries, facilitating their religious ceremonies, mediation in internal disputes, and invitation to government meetings.¹⁶ To get recognized, a religious organization must satisfy the following four criteria: (1) having a completely distinct theology from other religions, (2) being practised by no fewer than 5,000 people in the latest round of a national census, (3) its teaching not violating constitutions and laws of Thailand, and (4) not having any hidden political agenda.¹⁷ An application must declare its affiliation with its foreign headquarters, names of senior ministers, and the locations of its branches. Once recognized, the religious organization is entitled to receive accommodation as part of the logistics for its missionaries and invitations to participate in the DRA's events. At the same time, it has the duty to update the DRA of any internal changes and promote morality and Thai culture.¹⁸ The regulation shows clearly that support and control usually comes in the same package.

So far, the DRA recognizes only a handful of religious bodies. Three reasons might play a role in limiting the number of recognized religious bodies. First, the recognition process hinders newcomers. A newcomer can only be admitted if it gains a unanimous approval from existing

¹² Buddhist Sunday School is a replica of Christian Sunday School. It has a similar purpose of teaching basic Buddhism to small children.

¹³ See DRA, *Department of Religious Affairs* 31-32.

¹⁴ *Thailand 2013 International Religious Freedom Report*, 4.

¹⁵ *Ibid.*

¹⁶ The Department of Religious Affairs Regulation on Religious Organizations B.E. 2512 (1969), rule 6.

¹⁷ *Ibid.*, rule 4.

¹⁸ *Ibid.*, rule 7.

organizations. Second, the benefits offered are insignificant. Many religious groups are able to practise unhindered without recognition. Lastly, the DRA also seems reluctant. It appears that the regulation was promulgated in 1969, at the beginning of the communist scare in Southeast Asia, so the government felt the need to register and monitor all types of associations, especially foreign ones. This regulation stresses that religion shall not mix with politics and shall aim to advance the goal of the regime, not subvert it. Now, the threat has subsided. Moreover, the DRA, because of its Buddhist-affiliated history, is not very enthusiastic about accepting new non-Buddhist organizations.

There is much confusion about which religious organizations can be recognized. Documents and personal inquiry provide different results. In addition to the Sangha Council, which is the official body representing the Thai monastic order, the DRA recognizes four Buddhist organizations: The World Fellowship of Buddhists, the Buddhist Association of Thailand under Royal Patronage, the Young Buddhist Association of Thailand under Royal Patronage, and the Pali and the Dhamma Association of Thailand under Royal Patronage of the King's Mother¹⁹ Two Islamic organizations that the DRA recognizes are the Office of Chularajmontri and the Central Islamic Committee of Thailand. The DRA recognizes five Christian organizations: The Catholic Bishop's Conference of Thailand, the Church of Christ in Thailand, the Evangelical Fellowship of Thailand, the Thai Baptist Church, and the Seventh Day Adventist Church of Thailand. It recognizes three Hindu bodies: The Hindu Dhamma Sabha, The Hindu Samaj Society and the Royal Brahmin Office, and two Sikhs: Sri Guru Singh Sabha and the Namdhari Sangat of Thailand. Confusion exists over which organizations are recognized by the DRA. For example, in the International Religious Freedom Report, the U.S. Department of State notes that there are six Christian organizations without specifying them. The Royal Brahmin Office is often not mentioned.

Another role of the DRA is to regulate foreign missionaries.²⁰ The nine-point rule commands foreign missionaries to respect Thai laws and customs and refrain from becoming involved in politics. They must neither deceive the public nor exaggerate their beliefs. They must not confuse the public by imitating a monk's robes. Also, they must not operate with aggression

¹⁹ Personal communication on 21st July 2017. However, according to the DRA's account, it supports seven Buddhist organizations but it does not state whether it recognizes the extra three or not. See DRA, *Department of Religious Affairs* 146.

²⁰ The Department of Religious Affairs Regulation on Foreign Missionaries B.E. 2524 (1981).

or contempt leading to religious tension. The DRA sets a quota proportionate to the percentage of religious minorities in Thailand. A licensed missionary enjoys benefits such as a longer visa period.²¹ In theory, violation of rules regulating missionary conduct results in revocation of that missionary's license and extradition as well as withdrawal of the state's support of the religious organization to which that missionary belongs. However, there is no record of the regulation ever being invoked. Many unlicensed missionaries, for example, those of the unrecognized Church of Jesus Christ of Latter-day Saints, continue working under tourist visas, and to date there have been no prosecutions.²² Currently, the DRA has issued licenses to 6 Muslims, 1,560 Christians, 20 Hindus, and 41 Sikhs.²³ The figures show that Christianity, despite being the third largest religion, has been the most active in missionary activities.

The following section will discuss the government's handling of the five officially recognized religions, which are categorized into four major groups. Discussion begins with a general overview of that religion's history and profile, followed by the central organization, and the personnel.

B. Tier One: Buddhism

The most important actor for Thai Buddhism is the Sangha. Sangha is a generic term referring to a gathering of four monks or more. The Sangha (*Kha-na-song*), however, is the official body representing Thai Buddhism. Prior to the first Sangha Act (1902), monks had been organized according to ordination lineage, with each monk belonging to the group of his preceptor.²⁴ Control over the Sangha was sporadic and limited to the capital and its adjacent provinces where the ruler's influence was eminent.²⁵ The control was often limited to important or royal temples. Beyond the capital's periphery, the king's authority faded and so did his control over Buddhism. From time to time, he might order purification and recension but there was no systematic, universal, control of Buddhism in Siam.²⁶ Elsewhere, local sanghas relied on

²¹ *Ibid.*

²² US Department of State, *Thailand 2016 International Religious Freedom Report* (2017) 11.

²³ *Ibid.*, 5.

²⁴ Nidhi Eowseewong, 'รัฐกับการแบ่งนิกายของสงฆ์' [State and the sangha's establishment of sects] *Matichon Weekly* (16 February 2017) <https://www.matichonweekly.com/column/article_24949> accessed 22 September 2019.

²⁵ Ishii, *Sangha, State, and Society* 71-72.

²⁶ Tambiah, *World Conqueror and World Renouncer* 183-188.

support from the local lords, with practices and allegiance varying from one temple to another. The situation remained so until the religious reforms of King Chulalongkorn.

Early on in his reign, King Chulalongkorn felt mounting pressure to consolidate his power. Siam's loosely organized tributary state system put his kingdom at risk of foreign encroachment as well as internal rebellion. The potential was there for a charismatic religious leader to mobilize a large mass against the ruler. As he consolidated these tributary kingdoms into his provinces, the risk of rebellions became greater, some being inspired by local Buddhism.²⁷ These conflicts became of increasing concern since they might bring Bangkok into potential conflict with its new neighbours, the British and French Empires. In addition to administrative reform, Chulalongkorn wanted these variants of Buddhism to be brought under one body that was effectively under his command, and teach only what he deemed to be safe. Hence, Thai Buddhism had to justify his rule and serve the state's goals, not the opposite.²⁸ The new Sangha had to be united, but not enough to challenge him.²⁹ Under the Sangha Act, the government delegates administrative power to govern the Thai Sangha to an assembly of senior monks known as *mahatherasamakhom*, literally meaning the Great Council of Elders but more commonly referred to as the Sangha Council.

The first Sangha Act was enacted in 1902 under King Chulalongkorn's absolute rule. It transformed the traditional-based sangha into a law-based body. Similar to the absolute monarchy of the time, the Sangha Council had vested in it total control over Thai Buddhism. The head was the Sangha Raja, the Supreme Patriarch, who enjoyed, at least in theory, king-like powers and status.³⁰ The overall administration was top-down in manner, which led to complaints by monks of lower ranks that disputes with their superiors were not handled fairly.³¹ Especially acute was the sectarian conflict between Thammayut, which received royal favour, and Mahanikai, the majority. After the 1932 revolution that ended the absolute monarchy, the more progressive wings of the Sangha, mostly young monks who felt injustices had been done

²⁷ For general account of rebellions in the newly acquired territories, see Ansil Ramsay, 'Modernization and Reactionary Rebellions in Northern Siam' (1979) 38 *The Journal of Asian Studies* 283. For Buddhist-inspired rebellion, see Murdoch, *Holy Men's Rebellion*.

²⁸ The process of selecting a new narrative is a regional phenomenon. See Keyes *et al*, *Asian Visions of Authority* 5.

²⁹ Nidhi Eowseewong, 'รัฐกับองค์กรทางศาสนา' [The State and Religious Organization] *Matichon Online* (31 July 2017) at < <https://www.matichon.co.th/news/613711> > accessed 1 April 2019.

³⁰ Ishii, *Sangha, State, and Society* 69-71.

³¹ Krajang, *Mahanikai-Thammayut* 85-89.

to them deriving from the absolute power of the Sangha Council, petitioned the People's Party to amend this dictatorial body.³² The 1942 Sangha Act restructured and divided the Sangha Council into three separate bodies.³³ The Sangha Assembly possessed the legislative power to legislate monastic laws while the Sangha Cabinet implemented them. Disputes were heard by the Sangha Tribunal. The three bodies operated under the patriarchy of the Sangha Raja who acted as a figurehead with no real power. The new structure was very similar to the constitutional monarchy that the People's Party had tried to establish.

This democratic administration was short-lived as it proved unpopular among senior monks, who criticized it as being contradictory to long-held tradition. According to opponents, the ancient canon dictated that monks live in a republican-style community where issues are collectively discussed, and the 1942 law disrupted such arrangement.³⁴ However, it should be noted that, despite the rhetoric of republicanism, the 'republican' community was actually very hierarchical. Seniority was a serious matter in monastic life, and junior monks were expected to defer to more senior colleagues.³⁵ Some critics of the 1942 Act complained that the Sangha Raja could no longer exercise absolute power.³⁶ Thus, the system that allowed members to be elected and express their opinions freely and equally, upset the upper echelons of the Sangha so much so that the senior monks refused to attend meetings and the assembly eventually failed to function.³⁷

In 1962 the absolute power model was reintroduced by Field Marshall Sarit Thanarat who was Thailand's authoritarian leader at the time. Sarit was a royalist-nationalist dictator so he replaced the democratic administration with an absolute monarchy, Chulalongkorn-style, law.³⁸ By reviving the absolute rule of the Sangha Council, Sarit hoped that his government and the Sangha could cooperate to fight against the communist insurgency.

In 1992, an amendment tried to distance the Sangha from the monarchy; the Sangha Raja would no longer be appointed by the king, instead, His Holiness would be promoted according to seniority. This provision was never invoked. In 2016, the appointment was amended back to

³² Jackson, *Buddhism, Legitimation, and Conflict* 70-72.

³³ *Ibid* 73 ;Sunthorn, *Administration of the Thai Sangha* 62-63.

³⁴ *Ibid* 65-66.

³⁵ *Ibid* 66.

³⁶ Jackson, *Buddhism, Legitimation, and Conflict* 77.

³⁷ Sunthorn, *Administration of the Thai Sangha* 67-68.

³⁸ Jackson, *Buddhism, Legitimation, and Conflict* 80-81.

the royal appointment and in 2017, the whole Sangha Council was placed entirely under the king's discretion.³⁹ In essence, the Sangha has remained almost unchanged for 50 years. The development of the Sangha administration reflects the deeper struggle between the liberal and conservative forces in Thai politics.

Formerly, like other religions, Buddhism was under the DRA. In 2002, the NOB assumed the liaison and book-keeping responsibilities. The NOB is placed under the Office of Prime Minister, a ministry-level agency that oversees special missions not covered by a specific ministry. The NOB acts as a secretariat office of the Sangha Council, relaying communication from the Sangha Council to the cabinet, and the palace if needed. It oversees and maintains common properties and promotes the dissemination of Buddhism, both in Thailand and abroad. This objective conveys the more ambitious goal of Thailand to be the global centre of Buddhism. In addition to policing and book-keeping monks and temples, the NOB carries out educational and promoting programs which overlap with those of the DRA.⁴⁰

(a) The Sangha Council

This system is similar to how the government regulates certain professions such as lawyers, engineers, medical doctors, nurses, or architects. However, unlike ordinary professional guilds, given its political importance, the Sangha Council has strong ties with the government and the palace. Another difference is the lack of external oversight. The Sangha Council is not subject to judicial review by the Administrative Court.⁴¹

i. The Sangha Organization

The Sangha Council is the highest authority over the Thai and other sanghas in Thailand. The Thai Sangha refers to the two sects of Thammayut and Mahanikai, both of which identify themselves as Theravada. The Sangha Council also recognizes two Mahayana sects:

³⁹ Khemthong Tonsakulrungruang, 'Thailand's sangha: turning right, coming full circle' *New Mandala* (7 August 2018) at <<https://www.newmandala.org/thailands-sangha-turning-right-coming-full-circle/>> accessed 1 April 2019.

⁴⁰ The Ministerial Regulation on Organization of the National Office of Buddhism BE 2557 (2014), sec. 2.

⁴¹ The Administrative Procedure Act B.E. 2539 (1996), sec. 4(9); Supreme Admin Ct Order Kor. Ror. 31/2561 (2018).

Chinnanikai (the Chinese sect) and Annamnikai (the Vietnamese sect).⁴² Both orders are under the Sangha Council's jurisdiction, but they cannot join the council.

There are 20 members from the most senior class of abbots sitting in the Sangha Council.⁴³ Prior to 2017, eight of them were *ex officio* the heads of the regional administration from the Thammayut and Mahanikai sects and twelve appointees were selected by the Sangha Raja. The Thai name, meaning the assembly of the elders, was very apt as promotion was usually based on seniority and the council members are mostly above their 70s. The Director of the NOB is the only lay member acting as the secretary of the Sangha Council. The Sangha Council is presided over by the Sangha Raja. At present, the appointment power has now returned to the king who may exercise it at will.

Although the Sangha Council is supposed to operate as a collective body, greater focus is placed upon the Sangha Raja, who is regarded as the embodiment of the Thai Sangha. He has virtually the sole and absolute power to rule over the Sangha in accordance with monastic and state laws. The Sangha Raja is the head of Thailand's spiritual realm as much as the King is the head of the temporal state.⁴⁴ As has been the tradition, therefore, the two leaders enjoy an intimate relationship. The first Sangha Raja was appointed by King Chulalongkorn who chose his half-brother as the candidate.⁴⁵ This way, he ensured that the Sangha would share and support his vision. This is true concerning the appointments of subsequent Sangha Rajas as well. The Sangha Act provides the Sangha Raja with legal protection no other religious head enjoys — that he is protected from an attack on his dignity.⁴⁶ This offense is similar to that of *lese majeste* concerning the Thai king, but is rarely invoked.⁴⁷ The punishment is also less severe.

Originally, the king would appoint a monk whom he trusted. The 1992 amendment changed that to the automatic promotion of the most senior member of the Sangha Council. The attempt to disentangle royal involvement in sangha politics failed when the 19th Sangha Raja, Somdej

⁴² Phattaraporn Sirikanjana, 'พระพุทธศาสนาในประเทศไทย: เอกภาพในความหลากหลาย' *Buddhism in Thailand: Unity within Diversity* (Thammasat University Press 2014) 221-223.

⁴³ The Sangha Act B.E. 2502 (1962), sec. 12.

⁴⁴ Jackson, *Buddhism, Legitimation, and Conflict* 77. See Duncan McCargo, 'The Changing Politics of Thailand's Buddhist Order' (2012) 44 *Critical Asian Studies* 627, 637-638.

⁴⁵ Ishii, *Sangha, State, and Society* 86-88.

⁴⁶ The Sangha Act B.E. 2505 (1962), sec. 44 bis.

⁴⁷ See the Penal Code, sec. 112.

Phra Yannasamvara, passed away in 2013. The appointment was delayed because the rightful candidate was controversial.⁴⁸ Somdej Phra Maha Rajjamangalacharn was said to be affiliated with the deviant school of Dhammakaya. The controversy convinced the military government not to submit the nomination for royal endorsement. The stalemate reached its peak after King Bhumibol passed away in October 2016. Then, in February 2017, the appointment power was returned to the king and the newly crowned King Vajiralongkorn appointed the less controversial, Somdej Phra Mahamuneewong, the third most senior member of the Sangha Council.⁴⁹

The Sangha Council is a closed system. The only outsider is the Director of NOB. In recent years, there has been an attempt to add more lay members but the plan has been resisted by the Sangha, fearing that an oversight would tamper its autonomy.⁵⁰ The government decided not to proceed with the plan.

Below the Sangha Council, the administration resembles that of the administrative branch, with region, province, district, sub-district, and temple abbots. At each level, there are two divisions belonging to the Thammayut and Mahanikai sects.⁵¹

ii. Objective and Authority

The most important task for which the Sangha Council was created is to take complete control of the sangha. The Sangha Council oversees both the Thai Sangha and other sanghas. It aims to unify monks and uphold Thai Buddhist orthodoxy and orthopraxy that best serve the state's interest. For this purpose, it is assigned with a list of duties such as to promote Buddhism among lay and monastic communities and to preserve dhamma and vinaya.⁵² The most important duty is that 'to govern the Sangha with peace and order' which serves as its policy statement.⁵³ The Sangha Council is therefore equipped with expansive legislative, executive, and judicial powers.

⁴⁸ Dubus, *Buddhism and Politics* 11-19; 'Men-at-Alms' *The Economist* (2nd April, 2016) at <<https://www.economist.com/news/asia/21695901-squabble-clergy-widens-thailands-dangerous-divides-men-alms>> accessed 1 April 2019.

⁴⁹ Khemthong Tonsakulrungruang, 'Restoring Thailand's Spiritual Realm' *New Mandala* (20 February 2017) at <<https://www.newmandala.org/restoring-thailands-spiritual-realm/>> accessed 1 April 2019.

⁵⁰ Katewadee, *Politics of Thai Buddhism* 12-13.

⁵¹ Sunthorn, *Administration of the Thai Sangha* 69-71.

⁵² The 1962 Sangha Act, section 15 tri.

⁵³ *Ibid*, section 15 tri (1).

First, despite the reputation of Theravada's strict adherence to the canonical text, in reality, the Sangha Council can legislate rules that supplement the Tipitaka. It oversees the appointment, transfer, and promotion of monks to various classes of abbotship. Another important role is that regarding education. It designs the curriculum and arranges the annual Pali examination.⁵⁴ Finally, when a dispute arises, whether a monk is accused of misconduct or his practice is considered deviant, if a senior abbot in charge cannot adjudicate on the case, it will be heard by the Sangha Council. In the most serious cases, an accused monk if deemed guilty can be expelled and defrocked.

All the above powers enable the Sangha Council to monopolize Thai Buddhism. Rules, promotion, examination, and prosecution are carrot-and-sticks that shape Thai Buddhist orthodoxy and standardize practices. Its total control over how to understand Buddhism and the punishment of deviants, means the Sangha Council has become the authority in recognizing what is Buddhism and what is not. Monks who refuse to obey the Sangha Council could be expelled, which will result in their being deprived of all state benefits. However, expulsion is rare. Without the state's cooperation, it is almost impossible to expel a non-conformist group. Since the 1970s, the Sangha Council has faced the emergence of new Buddhist movements that have adopted different teachings and practices. Notably, there are the Bhikkhuni (female monk) movement,⁵⁵ the fundamentalistic Santi Asoka,⁵⁶ and the materialistic Dhammakaya Temple.⁵⁷ Only the Santi Asoka was expelled following its criticism of the Sangha Council's laxity and renounced its membership from the Sangha in 1973. Once expelled, the Sangha Council pressed criminal charges against the leader of Santi Asoka, Phra Photirak, for dressing in a monk's robes without permission. Photirak relented by changing his robe colour and title, from Phra (Buddhist monk) to Samana (generic priest).⁵⁸ However, Santi Asoka continues to operate in Thailand and no further action has been taken against the movement. Elsewhere in Thailand, numerous individual monks and temples teach syncretic Buddhism, some of which are quite radical. Despite this, the Sangha Council does not prosecute them.

⁵⁴ Ishii, *Sangha, State, and Society* 81-97; Wells, *Thai Buddhism* 14-15.

⁵⁵ Martin Seeger, 'The Bhikkhuni-Ordination Controversy in Thailand' (2008) 29 *Journal of the International Association of Buddhist Studies* 155.

⁵⁶ Suwanna, *Religious Movements* 404.

⁵⁷ Scott, *Nirvana for Sale*; Mackenzie, *New Buddhist Movements* 58-64; Suwanna, *Religious Movements* 401-402.

⁵⁸ Mackenzie, *New Buddhist Movements* 123-127.

A common criticism of the Sangha Council's authority relates to its composition. The all-male gerontocratic body is known for its ultra-conservative stance.⁵⁹ This conservatism makes the Sangha less adaptable to social change, effectively failing to appeal to the younger generation.⁶⁰

(b) Monks

Sangha is one of the three gems of Buddhism, which comprise the Buddha, dhamma, and sangha.⁶¹ Sangha preserves Buddha's dhamma through its study, practice, and dissemination. Thus, a monk is the personification of Buddhism.⁶² He is considered a field of merit where people sow meritorious deeds and salvage their souls.⁶³ From the political perspective, monks are a double-edged sword. On the one hand, they are a crucial tool for communicating with the polity and implementing public policies. On the other hand, they are an army of disciplined men who could potentially be out of the state's control and become a threat. As a result, there are both religious and political incentives for the government to closely control monks through monitoring and various schemes of benefit.

There are five types of Buddhist renunciants in Thailand. A man of able body and mind can be ordained upon turning 20. Upon ordination, he is known as *Bhikkhu*, or a monk, who must observe the 227 precepts. An underage male may choose to become *Samanen*, a novice, the requirements for which are less stringent for he observes only 10 precepts. For the female, the choice according to Tipitaka is to become *Bhikkhuni*, a female monk, observing 311 precepts or *Samanenri*, a female novice. The Sangha Council does not accept the existence of the female renunciants, arguing that the lineage had long disappeared from Theravada school so both *Bhikkhuni* and *Samanenri*, who are ordained by the Mahayana school, are neither under the Sangha Council nor part of the Thai Sangha.⁶⁴ *Mae chi*, however, have an ambiguous status.⁶⁵ Unlike the others, *mae chi* is not formally acknowledged in the Tipitaka but is a local tradition

⁵⁹ Nidhi, *Buddhism in the Changing Thai society* 88-108; Phra Phaisan, *Thai Buddhism in the Future* 99-101; Sunthorn, *Administration of the Thai Sangha* 72.

⁶⁰ Nidhi, *The State and Religious Organization*.

⁶¹ Payutto, *Dictionary of Buddhism (Vocabulary Version)* (38th edn, Wat Nyanaves, 2015) 368.

⁶² Rupert Gethin, *The Foundations of Buddhism* (Oxford University Press 1998) 85-86.

⁶³ Ishii, *Sangha, State, and Society* 13-14.

⁶⁴ See Seeger, *The Bhikkhuni-Ordination Controversy*.

⁶⁵ Monica Lindberg Falk, 'Do Buddhist 'Nun' Need Thai Sangha?' in John Whalen-Bridge and Pattana Kitiarsa (eds), *Buddhism, Modernity, and the State in Asia: Forms of engagement* (Palgrave, 2013) 231.

which allows a woman to shave her head and wear a robe of any colour but not saffron. Followers of mae chi observe 8-10 precepts and most reside in a separate quarter of a temple. Mae chi is a local tradition so there is no canonical provision directly applicable in its case. Some of them voluntarily fall under the Sangha Council's jurisdiction through the Thai Nun Institute but others have chosen to establish their own order.⁶⁶ Strictly speaking, the Sangha Council has no authority to govern them except by barring them from entering the temple's premises. A mae chi observant is of a much lower status than a monk but the Council of State ruled that they are ascetics under the Thai constitution.⁶⁷ As a consequence, they are entitled to some state subsidies such as discounted bus fares.

i. Admission

Admission to the Sangha is the first step in which the Sangha Council exercises its control.⁶⁸ An ordination must be conducted by an *Uppajja*, or preceptor. According to vinaya, a preceptor must have been in the monkhood for more than ten years and be able to guide a newly ordained monk through a complicated system of vinaya.⁶⁹ There is no central authority to certify a preceptor. Any monk who satisfies these conditions can ordain another individual. In premodern Siam, a monk would identify himself through ordination lineage. But since Chulalongkorn's reforms, the Sangha Council takes control over the ordination. A preceptor is required to seek approval by getting appointed from a senior abbot of his sect.⁷⁰ A quota is set at one preceptor per one sub-district.⁷¹ Ordination from an unlawful preceptor is void and subject to one-year imprisonment.⁷² In its early years, the Sangha Council put some respected monks from the northern 'Yuan' tradition on trial for unlawful ordination in order to subordinate the northern vernacular Buddhism and display Bangkok's authority over the Northern territories of Lanna.⁷³

⁶⁶ *Ibid*, 235-238.

⁶⁷ The Council of State Memorandum no. 1454/2556 (2013).

⁶⁸ Ishii, *Sangha, State, and Society* 73-74.

⁶⁹ Phra Maha Kriangkrai Kerkchaiwan, กระบวนการคัดเลือกและวิธีการฝึกอบรมพระอุปัชฌาย์ของคณะสงฆ์ไทย [*The Thai Buddhist Order's Process of Selection and Training Methods of Preceptors*] (MA in Buddhist Studies, Thammasat University, 2011) 11-20.

⁷⁰ The Sangha Council Rule no. 17 on Appointment and Dismissal of a Preceptor B.E. 2536 (1993), sec. 8.

⁷¹ *Ibid* sec. 7.

⁷² The 1962 Sangha Act, sec. 42.

⁷³ Taylor M. Easum, 'A Thorn in Bangkok's Side: Kruba Sriwichai, Sacred Space, and the Last Stand of the Pre-Modern Chiang Mai State' (2013) 21 *Southeast Asia Research* 211.

A person who wishes to ordain must also satisfy both the vinaya and the Sangha Council's rules. Vinaya allows only a free man who is at least 20 years old and of able body and mind to be ordained.⁷⁴ In addition to vinaya requirements, the Sangha Council requires that a person must be a resident of that sub-district, literate, and of good behaviour.⁷⁵ He may be disqualified if he is accused of any criminal charges or previously imprisoned for a high crime.⁷⁶ Once ordained, a preceptor will issue a new monk a certificate of identification, which details his ordination and records his residency.⁷⁷ A monk must carry this certificate with him and have it ready for inspection.

In recent years, the Sangha Council set the minimum period for ordination at 15 to 30 days, claiming that the length is adequate for learning basic dhamma.⁷⁸

ii. Education

Education is an effective measure for controlling the Sangha. For those who wish to remain in the monkhood permanently, in addition to attending religious services and meditation, preparing oneself for examination is one of the principal activities. Monastic education is based on the curriculum designed by Prince Vajirayanna, the first Sangha Raja and King Chulalongkorn's half-brother. He was aware that most monks were not proficient in Pali so they could not read the text of Tipitaka.⁷⁹ He then composed several textbooks in Thai, focusing on selected chapters of Tipitaka and the stories of Buddha. In addition to facilitating Thai monks to understand the Buddhist canon, the curriculum helped Prince Vajirayanna and the Sangha Council to direct monks' attention and monopolize the understanding of Buddhism.⁸⁰ There are two types of examination: Dhamma and Pali proficiency. Once a year, monks may take an examination in either dhamma and Pali proficiency. If a monk passes these exams, he

⁷⁴ Phra Maha Kriangkrai, *Selection and Training Methods of Preceptors* 22-28.

⁷⁵ The Sangha Council Rule no. 17, sec. 13.

⁷⁶ *Ibid*, Rule 14; However, there is at least one case of an ordination taking place in violation of the Sangha Council's rule. After the PDRC demonstration, the PDRC leader, Suthep Thaugsuban, was charged with committing an act of terrorism. He was ordained in the Southern Thailand where his political base is located. Although many critics raised the issue, the preceptor defended the act by interpreting Rule 14 as applying to a convicted, not a suspect. See Thomas Borchert 'Imperfect Refuge: Thai Politicians Turns to Monkhood' *Tricycle* (22 May 2015) at <<https://tricycle.org/trikedaily/imperfect-refuge/>> accessed 1 April 2019.

⁷⁷ *Ibid*, sec. 19.

⁷⁸ 'มติ มส. บวชพระสงฆ์ ระยะสั้น ต้อง 15 หรือ 30 วัน ชี้ 7 วัน น้อยไป' *Thairath* (19 January 2018) at <<https://www.thairath.co.th/news/local/1181842>> accessed 1 April 2019.

⁷⁹ Ishii, *Sangha, State, and Society* 86.

⁸⁰ *Ibid*, 76-77. See criticism in Phra Phaisan, *Thai Buddhism in the Future* 29-39.

will be awarded the title of *Parian* and a monthly allowance. The ninth level, the highest level, is equivalent to a bachelor degree.⁸¹ He can get promoted into an administrative rank.

The examination system is not without problems. It is identified as the root of the Sangha's failure to connect to the modern world.⁸² The curriculum has not been updated since the Chulalongkorn's time. But no reform is taking place in the foreseeable future.

A temple also provides normal education up to secondary school. Then, at the tertiary level, the government has established two public universities dedicated to Buddhist study, with each one belonging to a different sect. Mahachulalongkorn University, in honor of King Chulalongkorn himself, is under the control of the Mahanikai sect and Mahamongkut University, named after his father, King Mongkut, is under the control of Thammayut.⁸³ The act of founding a Buddhist college indicates the attempt to modernize and rationalize Buddhism. A monk who finishes basic education can enroll, but the universities also welcome lay students. Currently, the two universities are funded by the state and run by monks. They offer several Buddhist-related curricula up to doctoral degree level.

iii. Honorific titles

Another advancement in the monastic life is that of promotion to a higher rank. The rank system began as early as the Sukhothai era when the king honored monks with a good knowledge of dhamma and exemplary behaviour to be *Phra Kru* and *Sangha Raja*. Over time, the rank system became more elaborate. With several layers of ranking and sophisticated titles, it resembled the rank system of the royal family and courtiers in the absolute monarchy of Siam.⁸⁴ A monk with a title would be assigned an administrative task so the ranking system was developed as the Sangha bureaucracy was formed under the 1902 Sangha Act. Promotion was no longer

⁸¹ Dhamma Education Act B.E. 2562 (2018), sec. 24.

⁸² Somkid Saengjan, 'คลั่งปมการศึกษาสงฆ์ไทยในภาวะแช่แข็ง หลักสูตรเก่า-ขาดอิสระ-ปัญหาหมกหมม' [Thai Sangha Education in Frozen Stage, Outdated Curriculum, Lack of Independence, Chronic Problems] *Thai Civil Rights and Investigative Journalism* (5 July 2015) at <<https://www.tcijthai.com/news/2015/05/scoop/5665>> accessed 19 September 2019; Jessada Buaban, 'การพิทักษ์จารีตของพุทธเถรวาทไทยผ่านการเรียนบาลี' [Preserving Custom of Theravada Thai Buddhism through Pali Education] *Thai Civil Rights and Investigative Journalism* (6 March 2018) <<https://www.tcijthai.com/news/2018/06/article/7794>> accessed 28 September 2019; McCargo, *Buddhism, Democracy, and Identity* 159.

⁸³ See <https://www.mcu.ac.th/pages/history> and <http://www.mbu.ac.th/index.php/2012-11-14-02-09-46/2012-11-14-02-25-49?showall=1&limitstart=#.XQndgdMzaqQ>.

⁸⁴ See Pinyapan Potjanalawan, *ไทยปิฎก* [Thai-pitaka] (Illuminations Editions, 2019) 43-47.

based on knowledge of dhamma, but administrative skills. An award is mainly judged by the amount of donation that monk earns for building of infrastructure. The larger, the better. The monastic honorific title system persists even though honorific titles in the Siamese court were abolished after 1932. A monk with a title will receive state benefits: decorated ceremonial fans, a monthly allowance, and assignment to a constituency.⁸⁵ He can ascend to the level of Sangha Raja.

On the one hand, the rank system is a critical component of the Sangha bureaucracy, recruiting and rewarding competent monks to run the system.⁸⁶ On the other hand, it serves as an incentive for monks to be cooperative and, consequently, submissive to the establishment. Besides, the criteria have shifted from knowledge in dhamma to more materialistic and corporate achievements such as the amount of the annual donation or the numbers of new constructions under a certain abbot.⁸⁷ Therefore, it is criticized for distracting monks from their primary duty of studying dhamma and seeking nirvana.⁸⁸

iv. Privileges and limitations

The revered status of a monk confers a number of benefits. Some are unconditional. The government-run Sangha Hospital specifically caters for monks whose vinaya restrictions make them unsuitable for being hospitalized alongside lay patients. Another subsidy is the discount or fee exemption from public transportation for monks, novices, and nuns with a certificate of identification.⁸⁹ On a bus, there are seats reserved for a monk whom is forbidden by vinaya from sharing a seat with a woman. No similar favour, however, is given to nuns.

A monk's right to property remains intact. A monk is expected to renounce his worldly possessions, and whatever he earns during his monastic life is supposed to be shared among his peers. Yet, the Civil and Commercial Code does not bar him from having possessions.

⁸⁵ The National Office of Buddhism Regulation on Nittayapat Money B.E. 2556 (2013).

⁸⁶ Phra Narong Sangkhawichit, 'การปกครองคณะสงฆ์ไทยในปัจจุบัน: ปัญหาและแนวทางแก้ไข' [*Problems of Thailand's -Sangha Administrative Authority and Suggested Solution*] (MA in Buddhist Studies, Thammasat University, Faculty of Liberal Art, 2015) 63-64.

⁸⁷ *Ibid*, 94. See 'สมณศักดิ์' [Honorific Title], (*Dhamma-Gateway*) at <<http://www.dharma-gateway.com/monk/monk-03-01.htm>> accessed 22 September 2019.

⁸⁸ *Ibid*, 94-95; Payutto, 'ตอบเรื่อง พรบ. คณะสงฆ์' [*Answers on the Sangha Law*] (Sulak Sivaraksa interviewed, PA Payutto for Dhamma Foundation, 3rd edn. 2018) 13-16.

⁸⁹ For example, see Bangkok Mass Transit Authority at <http://www.bmta.co.th/th/services>.

Moreover, although the Code dictates that his estate goes to the temple, he may dispose of it prior to his death at will, or prepare a will.⁹⁰ This leeway allows a monk to avoid giving up his assets and actually accumulate wealth.⁹¹

Other benefits are conditioned by a monk's ranking. There is a monthly allowance for a monk who (1) is appointed to the bureaucracy, (2) passes the high-level ecclesiastical examination, or (3) is stationed in a hardship area.⁹² The amount given is not much in comparison with a normal salary but is still substantial. Another benefit is exemption from military duty. In ancient Siam, lay men were subject to corvée labour, but this was later replaced by King Chulalongkorn with the military draft. Able-bodied men must serve two years in armed forces, but a senior abbot is exempted from such a duty.⁹³ Notably, conscientious objection in general is not allowed.

The above benefits come with a monk's sacred status, as the holy man who can guide fellow humans to enlightenment. There is a cost for maintaining that soteriological state as well. Most important is to keep Buddhism untainted; therefore, the political freedom of monks is limited. Monks and novices were prohibited from voting in local elections as early as 1914.⁹⁴ This was extended to national elections in 1949 when the conservative was rising to power.⁹⁵ Monks, novices, priests, or ascetics, were made ineligible to vote in a general election. Ineligibility to vote further barred them from standing in an election.⁹⁶ This prohibition covered Christian priests, and later was extended to Buddhist nuns.⁹⁷

Buddhist disenfranchisement is a common characteristic of election laws in Buddhist-dominant countries in Southeast Asia.⁹⁸ It is still in place in Myanmar and Thailand whereas Laos and Cambodia removed the ban once they were under communist control. While disenfranchisement in general is considered a serious violation of human rights, the exclusion

⁹⁰ The Civil and Commercial Code, sec. 1623.

⁹¹ See Larsson, *Keeping Monks in their Place?*.

⁹² National Office of Buddhism, Nittayapat Allowance Table B.E. 2554 (2011) at <http://www1.onab.go.th/attachments/268_NitayaM.pdf> and <http://www1.onab.go.th/attachments/268_NitayaM-Sp.pdf>

⁹³ The Military Service Act B.E. 2497 (1954), sec. 13(1).

⁹⁴ Larsson, *Monkish Politics* 51.

⁹⁵ *Ibid*, 53

⁹⁶ Thai Constitution B.E. 2492 (1949), art. 90.

⁹⁷ The Council of State Memorandum, no. 1544/2556 (2013).

⁹⁸ *Ibid*, 71.

of monks is understood by Buddhist-dominant countries differently. The government is not depriving monks of basic human rights or curbing religious freedom. Instead, the government is protecting representatives of the spiritual realm from becoming involved with worldly politics, which is considered dirty and inferior. Disenfranchisement is, thus, not a sign of anti-religious hostility but a sign that the government has taken proper care of the Sangha.⁹⁹ Yet, this arrangement does not mean that the Sangha refrains from politics. In fact, the Sangha is actively involved in politics through informal means, as the above example of a call for Buddhism as the state religion shows.

Recently, younger monks who are dissatisfied with the Sangha Council's authoritarian handling have been advocating for voting rights.¹⁰⁰ The movement suggests a significant change in the attitude of the future generation of these holy men.

Another sacrifice a monk has to make in order to uphold the purity of the Sangha is his right to criminal justice. If a monk is charged with a criminal offence and his bail is denied, he must be disrobed before entering a prison.¹⁰¹ He is not presumed guilty, but the purpose of the rule is to protect the sanctity of the Sangha.

v. Expulsion

A monk may leave the monkhood any time he wishes by announcing his wish to leave in front of fellows.¹⁰² He will only be involuntarily removed from the monkhood in the case of (1) being declared bankrupt by the court,¹⁰³ or (2) being expelled by the Sangha Council.¹⁰⁴

A monk can be expelled if he violates the vinaya. The vinaya is a monastic legal code resembling a modern legal code in having the systemic categorization of offences as well as a procedure for hearing and sentencing.¹⁰⁵ It governs everything from the minute details of etiquette, such as table manners and walking gestures, to the serious crimes of theft and

⁹⁹ *Ibid*, 72.

¹⁰⁰ Nanchanok, *Election 2019*.

¹⁰¹ The 1962 Sangha Act, sec. 29.

¹⁰² Wells, *Thai Buddhism* 139-140.

¹⁰³ The 1962 Sangha Act, sec. 28.

¹⁰⁴ *Ibid*, sec. 26 & 27.

¹⁰⁵ Kieffer-Pulz, *What the Vinayas Can Tell* 48-50.

murder.¹⁰⁶ A misdemeanour might result in confession, temporary exclusion, or labour service depending on the severity of the crime. A more serious crime, *parajika*, could lead to immediate expulsion. The Sangha Council promulgates a rule on disciplinary action to supplement the vinaya procedure.¹⁰⁷ A convicted monk is entitled to an appeal.¹⁰⁸ The Sangha Council itself, or any assigned abbot, may act as a tribunal.¹⁰⁹

Even if a monk does not commit *parajika*, or a heinous crime, if he frequently violates the vinaya, an abbot of his residential temple may notify him, in writing, to behave. Should he fail to do so, an abbot may ask the incumbent abbot of that district administration to order an expulsion.¹¹⁰ However, if that monk's behaviour is more severe, judging from the frequency and notoriety of his crime, which could possibly jeopardize Buddhism and the Sangha administration, the Sangha Council may order an expulsion.¹¹¹ Once ordered, the monk must resign within three days. If he resists, after three days, the order is deemed to have immediate action.¹¹² That monk is no longer considered a monk and so is considered to be liable for his action for dressing like a monk, which is punishable by five-year imprisonment.¹¹³ The Sangha Council's decision is final, and there is no judicial remedy.

In principle, expulsion is strictly a monastic matter. The state should only be involved if the case constitutes a criminal offence. In reality, the state often has to intervene to assist. Police are called in to arrest a monk who violates the vinaya. Sometimes, the Sangha Council asks law enforcement to help purge rogue applicants, i.e. drug addicts.¹¹⁴

Recently, the military government successfully 'talked' an infamous ultra-nationalist monk, who advocated violence against Islam, into resigning from the monkhood.¹¹⁵ Phra Maha Apichart, whose sermons were similar to that of the controversial anti-Muslim monk Veerathu

¹⁰⁶ *Ibid.*

¹⁰⁷ The Sangha Council Regulation no. 11 on Nikkahakamma B.E. 2521 (1978).

¹⁰⁸ *Ibid.*, sec. 41-54.

¹⁰⁹ The 1962 Sangha Act, sec. 25.

¹¹⁰ The Sangha Council Regulation no. 21 on Expulsion from Monkhood B.E. 2538 (1995), sec. 3.

¹¹¹ *Ibid.*, sect. 4.

¹¹² The 1962 Sangha Act, sect. 43.

¹¹³ The Penal Code, sec. 208.

¹¹⁴ Tanakorn Wongpanya, 'เปิดข้อมูลวงการสงฆ์ เสพ-ค้ายาเสพติดช่วง 10 ปีพุ่ง 7 เท่า พระหนุ่ม 20-24 ปีมากที่สุด' [Breaking – Drug Use and Sells in Sangha Seven Fold Highest in Decade, Young Monks 20-24 Most Common] *The Standard Facebook Page* (29 August 2018) < <https://www.facebook.com/thestandardth/posts/1960859654206917/> > accessed 22 September 2019; See The Sangha Council Resolution no. 1/2562 (2019).

¹¹⁵ Pravitt, *Defrocked Anti-Muslim Buddhist Monk*.

of Myanmar, was detained when he travelled to the Deep South with an intention to provoke religious violence. This example is a good reminder that the state is able to manipulate the Sangha in a less legal and more discreet manner, bypassing any of the above procedures. The fact that the Sangha Council raised no objections to the government's tactic implied its submission or cooperation in this case.

(c) Temples

Although a monk is supposed to dwell in a village and the wilderness, the vinaya orders every monk to make a rain retreat and stay in the same place for three months of the monsoon season. The Sangha Act requires every monk to register with a temple where he studies dhamma under the supervision of an abbot. Even those who continue the tradition of forest dwelling must obey the rule. A monk without a temple is deemed fake and can be forced to disrobe. The temple is the smallest unit of the sangha bureaucracy.

i. Establishment of Temples

A proposal to build a temple has to be approved by the local NOB office, an incumbent senior abbot of that district, and the provincial governor.¹¹⁶ An application must contain the location, size, blueprint, budget, and reason for building a temple.¹¹⁷ Local NOB offices makes sure that no monasteries are situated too close to each other. Once approved, the provincial governor has to notify the NBO, which informs the Prime Minister and the Sangha Council. In addition, building, merging, moving, or dissolving a temple must follow a similar procedure, jointly reviewed by representatives of both the Sangha and the government.

To become a temple with full legal status (*wat*), a place must satisfy the criteria of (1) at least five monks stationed there for at least five years, (2) approval from the Sangha Council, and (3) the royal *sima*.¹¹⁸ *Sima*, according to the vinaya, demarcates an appropriate area where the Sangha gathers and conducts rites, such as ordination or recital of teaching. Without *sima* being properly demarcated, any rites are deemed void.¹¹⁹ The royal act of bestowing a *sima*

¹¹⁶ The Ministerial Regulation no. 1 B.E. 2507 (1964), sec. 3.

¹¹⁷ *Ibid*, sec. 2.

¹¹⁸ *Ibid*, sec. 11.

¹¹⁹ Petra Kieffer-Pulz, 'Rules for the Sima Regulation in the Vinaya and its Commentaries and their Application in Thailand' (1997) 20 Journal of the International Association of Buddhist Studies 141, 141.

strengthens the tie between the palace and the sangha, reaffirming the king's personal duty of patronizing Buddhism. An alternative is to remain a monastic shelter (*sam-nak-song*) which does not enjoy the same capacities as a temple, e.g. to carry out all rituals including ordinations.

ii. Temple Administration

A temple is a legal entity with the capacity to enter into transaction. An abbot, whom the Sangha Council appoints, is its representative. He is, by the Penal Code, a government officer, a status which confers both privilege and liability. He is authorized to accept, or expel, a monk and visitor into his temple.¹²⁰ His order carries legal authority, but he can face charges if he exercises it inappropriately.¹²¹

The biggest issue in administering a temple is wealth management. Bhikkhu, as a Buddhist monk is called in Pali, literally means he who begs, implying a modest, subsistent, frugal, living. Large amounts of wealth contradict the frugal image as well as breed corruption. Still, for a large temple, wealth is necessary to provide for monks and disciples a proper residence, education, and other welfare.

A temple can own three types of land: *ti wat*, *ti thoranee song*, and *ti kal-pa-na*. *Ti Wat*, literally the temple's land, is where the actual temple is located.¹²² *Ti thoranee song*, the sangha's land, is other land that that temple owns.¹²³ Both of them are protected by the Sangha Act so they cannot be transferred unless a transfer is done by a statute.¹²⁴ Also, the statute of limitations is not applicable and the court cannot confiscate and sell them.¹²⁵ If a temple is abandoned, these lands are transferred to the NOB, which will act as a trustee managing them. *Ti kal-pa-na* is, by tradition, donated to the temple to reap its usufruct.¹²⁶ However, the temple does not own it so it is treated as ordinary land. As there is no limit on how much land a temple can own, many of them acquire large amounts. These lands, *ti thoranee song*, and *ti kal-pa-na*, can be

¹²⁰ The 1962 Sangha Act, sec. 37-38.

¹²¹ *Ibid*, sec. 45; Udomsak Chuto-Chana, 'บทบาทเจ้าอาวาสในฐานะเจ้าพนักงานตามกฎหมาย' [The Roles of An Abbot as An Official] *National Office of Buddhism*, at <http://sta.onab.go.th/index.php?option=com_content&view=article&id=405&Itemid=413> accessed 1 April 2019.

¹²² The 1962 Sangha Act, sec 33.

¹²³ *Ibid*.

¹²⁴ *Ibid*, sec. 34.

¹²⁵ *Ibid*, sec. 34-35.

¹²⁶ *Ibid*, sec. 33.

commercialized under the guidelines from the NOB.¹²⁷ They may generate huge incomes for temples.

In addition to land, a temple earns income from donations. Monks are barred from working, and donations to temples are tax deductible.¹²⁸ The Sangha Council requires that an abbot must appoint a lay manager (temple warden, or *kappiya-karaka*) to help run the temple.¹²⁹ However, there is no specific criteria so, in many cases, a lay manager has a personal or familial tie with an abbot which leads to the potential for fraud.¹³⁰ Annually, a lay manager prepares a financial report to be submitted to an abbot.¹³¹ At present, the NOB does not provide a standardized template or require the report to be audited by a third party.¹³² Thus, there is no oversight mechanism over monastic finances. In conclusion, this loophole allows temples to own large amounts of property without proper regulation.

Whenever the topic of Buddhist reform is raised, the issue of monastic wealth is almost always discussed. Many agree that better auditing and a cap on the amount of wealth are needed. However, the Sangha always reacts fiercely against such an idea.¹³³

Thai state confers huge benefits to Buddhism. In exchange of such treatment, it is subject to an intensive monitoring scheme which limit an individual's freedom. The state asks for the Sangha's cooperation. This trade-off leads to a difficult tension as monks wish for more liberty but, at the same time, refuse to forego privileges.

C. Tier Two: Islam

¹²⁷ The Ministerial Regulation no. 2 B.E. 2511 (1968); See Nada Chansom, 'Buddhist Thai Temples' Financial Management: The Congruence of Good Governance Principles' (2014) 54 NIDA Development Journal 107, 122-123.

¹²⁸ The Revenue Tax Code, section 42(29).

¹²⁹ The Sangha Council Regulation no. 18 on Appointment and Dismissal of a Lay Manager B.E. 2536 (1993). See Gethin, *Foundations of Buddhism* 98.

¹³⁰ Nada, *Financial Management* 123-124.

¹³¹ Sangha Council Resolution 18/2558 (2015).

¹³² Nada, *Financial Management* 127-128.

¹³³ 'จี๋ เก็บภาษีพระ ! ทำคนไทยไม่ยอมยกบวช เนะให้มอง พระต่างจังหวัดไม่ได้รวย' [Monk's Tax Discourages New Ordination, Rural Monks Not that Rich] *Matichon* (25 May 2015) at <<http://www.alittlebuddha.com/News%202015/May%202015/033%20May%202015.html>> accessed 19 September 2019.

As the second largest religion after Buddhism, the official figure of Muslims is around four percent of the population although some estimates put the actual number to be as high as ten percent.¹³⁴ The Muslim community is by no means monolithic. There are roughly two groups of Muslims; those who reside in the upper 74 provinces, and those who live in the 3 southernmost provinces. The demography and dynamic of these two groups are completely different. The first group of Muslims is ethnically diverse. The oldest and most well-known group are descendants of Persian merchants who had arrived in Ayutthaya as early as the 15th century C.E.¹³⁵ They were welcomed for their expertise in trade and soon appointed to several key posts, especially one overseeing foreign commerce in the western part of the kingdom.¹³⁶ Even the governor of Bangkok was at that time a Muslim Turk.¹³⁷ Some of their descendants were converted to Buddhism but many remained Muslim. One of them, Sheikh Ahmad Quomi, was appointed the first Sheik al-Islam, the religious advisor to the King of Siam in 1543 CE.¹³⁸ His heirs inherited the title until the fall of Ayutthaya. Although the descendants are diminishing, the family lineage is still held in high regard. Sheikh Ahmad Quomi's Buddhist descendants became the ancestors of the Bunnags, the most influential family of aristocrats in the early Bangkok era.¹³⁹ In addition to Persians, there are Chinese Muslims from the North, Cham Muslims from Cambodia, Pakistani and Indian Muslims from South Asia, and Javan Muslims from Indonesia.¹⁴⁰ They reside throughout the country and have integrated into the local culture well. Except for the Persians, who are Shi'te, the majority of Thai Muslims are Sunni.

The second group of Muslims has only recently been incorporated into Thai society. The three southernmost provinces of Yala, Pattani, and Narathiwat, known as the Deep South, used to be the Islamic Sultanate of Patani, which identified itself more closely with the Malay kingdom than with the Siamese kingdom.¹⁴¹ Indeed, Patani had a turbulent relationship with Siam. Whenever Siam was able to assert its might, Patani became a tributary state but was always

¹³⁴ Gilquin, *Muslims in Thailand* 38-42.

¹³⁵ *Ibid*, 12-14; Christoph Marcinkowski, *Persians and Shi'te in Thailand: From the Ayutthaya Period to the Present*, (Nalanda-Srivijaya Centre Working Paper Series no. 15, 2014) 3-5.

¹³⁶ Ishii, *Thai Muslims* 454-455.

¹³⁷ *Ibid*, 454.

¹³⁸ Imtiyaz Yusuf, 'Islam and Democracy in Thailand: Reforming the Office of Chularajmontri/Shaiikh al-Islam' (1998) 9 *Journal of Islamic Studies* 277, 284.

¹³⁹ Marcinkowski, *Persians and Shi'te* 9.

¹⁴⁰ See Edward Van Roy, *Siamese Melting Pot* (Silkworms 2017) chapter 5.

¹⁴¹ Gilquin, *Muslim in Thailand* 64.

ready to rebel against once Siam's control weakened.¹⁴² This tributary status ended when the Anglo-Siamese treaty demarcated the Malay Peninsular so the Patani Sultanate was fully annexed to Siam as provinces in the early 20th century C.E.¹⁴³ As a result, the Muslims in the Deep South have a distinct ethno-religious setting distinguishable from the rest of the country. Whereas other Muslim communities are the minority in the overwhelmingly Buddhist-dominant society, in the deep south, more than 80 percent of the population are Muslims. With its Malay ethnicity and culture, locals pride themselves as the descendants of Patani, not Siam, who spoke Malay, not Thai, and professed Islam, not Buddhism.¹⁴⁴ This Malay Muslim identity is so distinct so that the Deep South Muslims distance themselves from even other Sunni Muslims elsewhere.¹⁴⁵ The Siamese government is fully aware of the dangerous potential, and there have been attempts to assimilate them, by force and through accommodation, into the mainstream, but these have not been very successful.¹⁴⁶ Insurgency keeps flaring up, with demands for autonomy of the region. Early resistance was led by Malay aristocrats who wished to retain their past glory. Beginning in the 1960s, the resistance took on more religious undertones.¹⁴⁷ The latest round began in January 2004 and has already claimed more than 7,000 lives.¹⁴⁸ This second group of Muslims is a challenge and also a critical factor in determining Thailand's policies toward Islam. Its policy has shifted from being Persian- to Malay-oriented. Here, national security is the main factor in policy-making.

Overall, Muslims, especially those of the first group, have successfully assimilated into Thai society. The king accepts them under royal patronage. There are no reports of serious discrimination in employment or education. Many Muslims have been appointed into high-ranking government offices, including an army commander, governor of Bangkok, and a university rector.¹⁴⁹ Ironically, Sonthi Boonyaratklin, the army commander, who staged the 2006 coup d'état against Thaksin in order to protect the trilogy of Thainess was himself a Muslim from a prominent old family. Muslim MPs are also present in the Legislative

¹⁴² *Ibid*, 64-65.

¹⁴³ *Ibid*, 65-67; Vickery, *Thai Regional Elites* 871.

¹⁴⁴ Joseph Chinyong Liow, *Religion and Nationalism in Southeast Asia* (Cambridge University Press 2016) 106.

¹⁴⁵ Liow, *Religion and Nationalism* 111.

¹⁴⁶ *Ibid*, 107-108; Gilquin, *Muslim in Thailand* 72-73; Vickery, *Thai Regional Elites* 876-877.

¹⁴⁷ See Liow, *Muslim Resistance* 28; S. P. Harrish, 'Ethnic or Religious Cleavage? Investigating the Nature of the Conflict in Southern Thailand' (2006) 28 *Contemporary Southeast Asia* 48.

¹⁴⁸ Deep South Watch, 'สรุปเหตุการณ์ในพื้นที่จังหวัดชายแดนภาคใต้ ประจำเดือนพฤษภาคม 2562' [Update on Deep South Situation, May 2019] *Deep South Watch Database* (18 June 2019) <<https://deepsouthwatch.org/th/node/11924>> accessed 1 July 2019.

¹⁴⁹ Apirak Kosayodhin and Prof. Somkid Lertpaitoon.

Assembly.¹⁵⁰ Rarely has religion been considered an issue. However, Islamophobia is on the rise. The recent round of insurgency has infuriated Buddhists as they witness monks being slain and temples burned.¹⁵¹ The Global War on Terrorism has fueled further suspicion and fear.¹⁵² Lastly, the ethnic cleansing of Rohingya Muslims and their influx as refugees has created more animosity toward the faith. As a result, Islam, as a whole, is increasingly being associated with terrorism and its adherents categorised as ‘others.’ There is the tendency that such discrimination might become even more commonplace in the foreseeable future.¹⁵³

(a) The Central Islamic Committee

The first regulation of Islam was the issuance of the Royal Decree on the Royal Patronage of Islam B.E. 2488 (1945). The Royal Decree was initiated by Pridi Banomyong, the progressive civilian leader of the People’s Party and the Regent of young King Ananda. The preamble of the Royal Decree states clearly that Pridi envisioned a central authority to govern Islam in Thailand, similar to the Sangha Council for Buddhism. By this decree, Pridi hoped to extend the king’s support to Muslims in the Deep South, a gesture of amicable coexistence.¹⁵⁴ The office of Chularajmontri was revived and the Central Islamic Committee (CIC), and the Provincial Islamic Committees (PIC), were created. However, Pridi’s plan was thwarted by the 1947 coup d’etat. The military junta issued the second royal decree (1948) that degraded Chularajmontri from the advisor of the king to the representative of Islam to the DRA.¹⁵⁵ The 1948 Royal Decree was replaced by the Islam Administration Act B.E. 2540 (1997) which redesigned the administrative structure of the CIC.¹⁵⁶ However, the Islamic administration still does not receive as much attention as the Sangha Council.

The 1945 Royal Decree on Islam Patronage designed the CIC to be a self-regulated body on which the law delegates power to govern Islamic affairs. Muslims are subject to the CIC, but

¹⁵⁰ Gilquin, *Muslim in Thailand* 119-122. See Duncan McCargo, *Tearing Apart the Land: Islam and Legitimacy in Southern Thailand* (Cornell University Press 2008) 63-87.

¹⁵¹ See Jerryson, *Buddhist Fury* 70-73.

¹⁵² Don Pathan, Ekkarin Tuansiri, and Anwar Koma, *Understanding Anti-Islam Sentiment in Thailand* (Patani Forum, 2018) 23.

¹⁵³ See *ibid*. But Nidhi Eowseewong proposes that Islamophobia is a symptom of weakening religions, of both Buddhism and Islam. See Nidhi Eowseewong, ‘ต่อต้านอิสลามในภาคเหนือตอนบน’ [Anti-Islam in Upper North] *Matichon* (15 February 2016) at <https://www.matichon.co.th/columnists/news_38007> accessed 18 July 2019.

¹⁵⁴ Ishii, *Thai Muslims* 457.

¹⁵⁵ *Ibid*, 458.

¹⁵⁶ Yusuf, *Islam and Democracy* 291-297.

the CIC receives less privilege and recognition than the Sangha Council. There is no national office of Islam acting as a liaison between the CIC and the government. Thus, the CIC reports and cooperates with the DRA.

The Central Islamic Committee acts as an advisor to the government as well as oversees the administration of provincial offices, mosques, and Islamic education.¹⁵⁷ It may issue fatwas but its disposition does not carry with it legal authority as the Sangha order enjoys. They are merely recommendations, and a violation of the CIC order is not a criminal offence. Similar to the Sangha Council, the CIC acts as the agent of the state in monitoring and communicating with Muslims, though with much greater difficulty given Islam's ethnically diverse nature.¹⁵⁸

i. The Chularajmontri

The Chularajmontri is a local version of the Sheik al-Islam, or the leader of the Muslim communities, which originated from Khorasan.¹⁵⁹ The Sheik al-Islam acted as the representative of the community to the government, giving the ruler advice on Islamic matters. The Ayutthaya Court adopted the idea and appointed a prominent Persian, Sheik Ahmad e-Quomi, to be the first Chularajmontri, overseeing the Muslim community.¹⁶⁰

The pre-modern Chularajmontris were Shi'ite Persians and appointment was made on a hereditary basis. However, the modern Chularajmontri is chosen from a candidate who is Thai by birth and who has a profound understanding of Islam. Also, he is required to be a believer in democracy with the king as the head of the state.¹⁶¹ He must be royally affirmed. All modern Chularajmontris are Sunni. The change of choice also reflected the changing political atmosphere. Shi'ites were in the minority but seen as fostering close ties with the royal palace while Sunni were the majority. The first modern Chularajmontri was a Sunni senator and also a close friend of Pridi, the leader of the People's Party. Later, he and Pridi had to flee Thailand together after the 1947 military coup.¹⁶² Prior to 1997, Chularajmontris had been royally appointed for life but the 1997 law changed the selection to an election by provincial

¹⁵⁷ Islam Administration Act B.E. 2540, sec. 18.

¹⁵⁸ Duncan McCargo, 'Co-optation and Resistance in Thailand's Muslim South: The Changing Role of Islamic council Elections' (2010) 45 Government and Opposition 93, 95-97.

¹⁵⁹ Yusuf, *Islam and Democracy* 283.

¹⁶⁰ *Ibid*, 284.

¹⁶¹ Islam Administration Act, sec. 7.

¹⁶² Ishii, *Thai Muslims and the Royal Patronage* 458; Yusuf, *Islam and Democracy* 285.

committees.¹⁶³ There was an attempt to set the retirement age too but the move was heavily opposed.¹⁶⁴

Since 1945, most Chularajmontris were selected from prominent Muslim families around Bangkok who are well integrated into the Thai society. Their integration into Thai society, however, has become an obstacle to the rule over Malay Muslims in the Deep South who wary of the government's involvement in Islam.¹⁶⁵ The current Chularajmontri, Aziz Pitakkumpol, who assumed his post in 2010, is the first from the southern province of Songkhla.¹⁶⁶ Although he is not ethnically Malay, the choice reflects the authority's attempt to bridge the gap between the two Muslim communities. Still, he shoulders a herculean task. The Chularajmontri works in two ways: first, acting as the guardian of Muslims in Thailand, and second, maintaining peace and order for the state.¹⁶⁷ As distrust is high on both sides, the Chularajmontri navigates dangerous waters. Recently, there were attempts by the NCPO to 'integrate' the Chularajmontri into the state by appointing Aziz into the National Legislative Assembly (NLA), which is the Legislative apparatus of the junta.¹⁶⁸ He declined, citing the need to maintain distance from the state.¹⁶⁹ But later, his son, Zakee, an academic, accepted an appointment to the Senate.¹⁷⁰

By law, the major roles of the Chularajmontri are: (1) to provide advice concerning Islamic affairs to the government, (2) to appoint a body of experts to provide advice on Islam, (3) to announce the date of Ramadan and other religious events, and (4) to issue fatwas to Thai Muslims.¹⁷¹ Unlike the Sangha Raja, he is not protected by any special defamation law.

ii. The CIC Organization

¹⁶³ Islam Administration Act, sec. 6.

¹⁶⁴ Yusuf, *Islam and Democracy* 292-298.

¹⁶⁵ Imitiyaz Yusuf, 'The Role of Chularajmontri (Shaykh al-Islam) in Resolving Ethno-religious Conflict in Southern Thailand' (2010) 27 *American Journal of Islamic Social Sciences* 31, 40; McCargo, *Co-optation and Resistance* 96.

¹⁶⁶ 'อาซิส พิทักษ์คุมพล เป็นจุฬาราชมนตรีคนใหม่' [Asis Pitakkulpol, New Chularajmontri] *Thairath* (16 May 2010) at <<https://www.thairath.co.th/content/83364>> accessed 19 September 2019.

¹⁶⁷ Gilquin, *Muslim in Thailand* 44-46.

¹⁶⁸ Khemthong Tonsakulrungruang, 'Thailand's National Legislative Assembly' *New Mandala* (25 August 2014) at <<https://www.newmandala.org/thailands-national-legislative-assembly/>> accessed 19 September 2019.

¹⁶⁹ 'จุฬาราชมนตรีขอไม่รับตำแหน่ง สนช.' [Chularajmontri Declines NLA Offer] *Prachatai* (2 August 2014) at <<https://prachatai.com/journal/2014/08/54868>> accessed 19 September 2019.

¹⁷⁰ 'คู่ถ่วงนักวิชาการ กรณี "ชากีชัย พิทักษ์คุมพล" โหวตให้ ประยุทธ์ เป็นนายกฯ' [Academic Opinions on Zakee Pitakumpol Votes Prayuth as PM] *Prachatai* (19 June 2019) at <<https://prachatai.com/journal/2019/06/83035>> accessed 22 September 2019.

¹⁷¹ Islam Administration Act, sect. 8.

Both the 1945 and the 1997 Islam administration laws were drafted during democratic periods. Perhaps this political background is the reason why the administration is more democratic and less top-down than that of the Sangha Council. Also, its non-monastic nature might contribute to a simpler design. There are only three levels: the CIC, PICs, and then mosques. The CIC members come from two sources; two-thirds comprise delegates from PICs, and another one-third is appointed by the Chularajmontri.¹⁷² Prior to 1997, the PICs were monopolized by influential Muslim figures in a dynastic style.¹⁷³ The 1997 Islam Administration Act introduces a more inclusive system by allowing local imams to vote.¹⁷⁴

Not every province has a PIC. Only a province with more than three mosques can then establish a provincial committee.¹⁷⁵ Currently, there are thirteen provinces that are able to establish a committee. Where there are fewer Muslims and mosques to be eligible for a PIC, the CIC is in charge or assigns a committee of a nearby province to be in charge.¹⁷⁶ Under a provincial Islamic committee, each mosque forms its mosque committee.¹⁷⁷ There is no equivalent of a Buddhist abbot for a mosque. There is no division under the CIC. Sunni and Shi'ite are subject to their mosque committee.

The election of PIC is not without problems. There are accusations of vote-buying and some Muslims see partisan competition as wrong and un-Islamic.¹⁷⁸ Inevitably, the PIC election is linked to local politics. In the Deep South, there are reports of the military intervening in the process in order to skew the results in its favour.¹⁷⁹

(b) Mosque

Similar to a temple, a mosque must obtain permission before building. However, permission is given from a PIC and a district officer.¹⁸⁰ There is no royal endorsement. A mosque is to be run by a committee headed by an imam, whose term is four years but re-election is permitted.¹⁸¹

¹⁷² *Ibid*, sec. 16.

¹⁷³ McCargo, *Co-optation and Resistance* 99.

¹⁷⁴ Islam Administration Act, sec. 23.

¹⁷⁵ *Ibid*.

¹⁷⁶ *Ibid*, sec. 18(6).

¹⁷⁷ *Ibid*, sec. 30.

¹⁷⁸ McCargo, *Co-optation and Resistance* 104-107.

¹⁷⁹ *Ibid*.

¹⁸⁰ The Ministerial Regulation No. 2 B.E. 2542 (1999).

¹⁸¹ Islam Administration Act, sec. 34.

Unlike a temple, a mosque's property enjoys no legal protection. The statute of limitations applies and property can be appropriated by the court's decision. It can be purchased or transferred through a normal business transaction. Still, as a place of worship, a mosque is protected from desecration by the Penal Code.¹⁸²

(c) State Accommodation

Because of its religious practices, Islam, more than others, requires state accommodation on various topics. Some accommodations are open for all but others provide only for those with certain conditions i.e. a Muslim Malay from the Deep South. While the government does not object to accommodating the faith, the list of accommodations can upset Buddhist onlookers, who believe, quite wrongly, that these accommodations come at the price of Buddhism being neglected.

i. Hajj

The Hajj Promotion Act B.E. 2524 (1981) accommodates the Muslim's need to go on the sacred pilgrimage of Hajj. An individual may arrange his own trip but the government helps accredit credible Hajj tour operators.¹⁸³ A Hajj tour operator must obtain a license or face up to five years imprisonment or a 100,000 baht fine.¹⁸⁴ Moreover, the DRA offers interest-free loans to subsidize Hajj pilgrimages.¹⁸⁵ However, some Buddhists are upset by the state's accommodation of Hajj as they regard it unnecessary and unfair to the Buddhist majority.¹⁸⁶

ii. Islamic Bank

The government had long been trying to accommodate Islamic financial principles through commercial banks, but in 2002, it decided to establish the Islamic Bank of Thailand as a public

¹⁸² Penal Code, sec. 206.

¹⁸³ The Hajj Promotion Act B.E. 2524 (1981), sec. 5.

¹⁸⁴ *Ibid*, sec. 14.

¹⁸⁵ The Department of Religions Regulation on Hajj Pilgrim Fund B.E. 2548 (2005).

¹⁸⁶ ‘ชาวพุทธหลังแผ่นดิน” ร้องนายกฯ ให้ชะลอหรือยกเลิกร่างพรบ.ฮัจย์’ [Buddhist Group Calls PM to Withdraw Hajj Bill] *Benar News* (10 August 2016) at <<https://www.benarnews.org/thai/news/hajj-events-08102016154112.html>> accessed 19 September 2019.

enterprise under the arm-length oversight of the Ministry of Finance.¹⁸⁷ The Islamic Bank of Thailand operates with advice from the Islamic advisory board of six experts in Islam.¹⁸⁸

The Islamic Bank of Thailand is a flashpoint for religious tension. Many Buddhists resent the bank, seeing it as a special accommodation that Buddhism does not receive.¹⁸⁹ There were attempts to propose a Buddhist Bank which would operate according to Buddhist principles and advance Buddhist causes. The proposal clearly showed misunderstanding or ignorance about Islam's necessity for a unique management of finance. So far, the proposal for a Buddhist bank has not been successful due to concern about business feasibility, which has angered Buddhist advocates.¹⁹⁰

The following sub-sections concern Muslim Malays from the Deep South. Only this ethno-religious minority may enjoy such privileges that other Muslims do not.

iii. Schooling

Due to cultural differences, Muslim Malays often view the national 12-year compulsory education with much skepticism, accusing it as a tool to indoctrinate young generations of the Deep South with Buddhist and Thai values.¹⁹¹ As a result, many Muslim Malay parents, in order to preserve their identity, prefer to send their children to traditional schools, known as the *pondok*.¹⁹²

A traditional pondok is a religious boarding school where students stay in residence with their teachers. There is no formal syllabus but the Koran, as well as the Malayu and Arabic languages occupy much of the learning. Sizes vary from a few students to a hundred or thousand. Although the pondok helps Malay Muslim preserve their cultural heritage, it hinders them from connecting with the rest of the country. The traditional pondok does not offer basic secular subjects such as mathematics, Thai, English, or science, and therefore, graduates are unable to

¹⁸⁷ See http://www.ibank.co.th/2010/th/about/about_detail.aspx?ID=1.

¹⁸⁸ Islamic Bank Act B.E. 2545 (2002), sec. 32.

¹⁸⁹ The Buddhism Protection Centre of Thailand, *Facebook* (16 October 2013) at <<https://www.facebook.com/bpct2556/posts/249649745186507/>> accessed 1 April 2019.

¹⁹⁰ ‘กฎหมายสะกดธนาคารพุทธศาสนาจะงัก’ [Law Halted, Buddhist Bank Stopped] *Post Today* (18 October 2013) at <<https://www.posttoday.com/politic/report/253864>> accessed 1 April 2019.

¹⁹¹ Liow, *Religion and Nationalism* 107.

¹⁹² *Ibid*, 114.

continue to higher education or compete in a job market.¹⁹³ These social and economic shortcomings are considered part of what fuels the Deep South violence.¹⁹⁴ The region has also witnessed a high unemployment rate and severe poverty.¹⁹⁵ Worse, there are reports and accusations that pondoks are the recruitment and training centres of Muslim insurgents. The security forces have raided several pondoks and demanded the closure of some.¹⁹⁶

The government has tried to bring pondok schools into the formal system by recognizing them as private Islamic schools and offering them aid. If a pondok school registers under the Private School Act and adopts a government-approved Islamic curriculum, it is eligible for governmental subsidy.¹⁹⁷ There are two types of registered private Islamic school. The first is a private Islamic school that teaches both national and Islamic curricula.¹⁹⁸ It is similar to other private schools, only it offers extra courses in religious subjects. The second type is a private Islamic school that teaches only a religious curriculum in an informal education program.¹⁹⁹ Both types are entitled subsidies and a government-prepared Islamic curriculum.²⁰⁰

There is the third type of Islamic school called a Tadika, which provides Islamic schooling for small children similar to a Christian Sunday school. Usually it is a supplementary to compulsory education. A Tadika is provided in a mosque outside normal school time.²⁰¹ The Tadika is local in origin to the Deep South but the government, in 1997, agreed to allow Tadika schools in mosques all over the country. A Tadika, officially known as a Centre for Islamic Education at a Mosque, requires approval from the DRA and comes under the supervision of the central or provincial Tadika committee.²⁰² However, due to its peculiar nature, oversight of Tadikas in the deep south is different. Tadika schools are subject to closer scrutiny because they are under the regional and district Tadika administrative committees, which, in addition

¹⁹³ Joseph Chinyong Liow, *Islam, Education & Reform in Southern Thailand: Tradition & Transformation* (Cambridge University Press 2015) 52-54; Songsiri, *What is it like to be Muslim in Thailand?* 156.

¹⁹⁴ Adam Burke, Pauline Tweedie, and Ora-orn Poocharoen, *The Contested Corners of Asia: Subnational Conflict and International Development Assistance: The Case of Southern Thailand* (The Asia Foundation 2013) 18-20.

¹⁹⁵ HRRC, *Keeping the Faith* 512.

¹⁹⁶ Liow, *Religion and Nationalism* 114-115; Liow, *Islam, Education & Reform* 36-37.

¹⁹⁷ The Private School Act B.E. 2525 (1982), sec. 15 (1).

¹⁹⁸ Liow, *Islam, Education & Reform* 57-59. <http://islamic-school-admin.blogspot.co.uk/2013/04/blog-post.html>

¹⁹⁹ The Private School Act B.E. 2525 (1982), sec. 15 (2).

²⁰⁰ Ministry of Education Regulation on Remuneration Religious Teachers in Private Islamic School Section 15 (1)(2) and Administration Subsidy for Private Islamic School Section 15(2) in Southern Border Provinces B.E. 2550 (2007).

²⁰¹ Songsiri, *What is it like to be Muslim in Thailand?* 154-155.

²⁰² DRA Regulation on a Centre for Islamic Education at a Mosque B.E. 2551 (2008), sec. 6.

to government agencies, include local representatives.²⁰³ Thus, administration of Deep South Tadikas is more participatory and heavily monitored.

There are also tertiary Islamic education institutes available too. But all three of them are located in the Deep South region.²⁰⁴

iv. Sharia Law

When the Deep South was annexed into Siamese territory, the government realized the need to ease the integration of Malay Muslims. In 1901, the government allowed Sharia to be applied in cases concerning marriage or inheritance if both parties, or a defendant, were Muslims.²⁰⁵ The move followed the British policy in the Malay Peninsula.²⁰⁶ The government would enlist local experts on Sharia, who would sit alongside judges and be consulted on Islamic legal principles in that matter. This rule affected the four provinces of Yala, Pattani, Narathiwat, and Satun. Satun might not have been Malay-dominant but it still held large numbers of Thai Muslims. The 1901 Rule was revoked in 1943 when the fascist-leaning government of Field Marshall Pibun enforced universal application of the Civil and Commercial Code.²⁰⁷ However, this period was brief. The government of Pridi, who also revived the Chularajmontri, restored the use of Sharia in the 1946 law.

Sharia is applicable in civil cases concerning marriage, family and inheritance disputes which normally come under Book 5 and Book 6 of the Civil and Commercial Code. If all parties in a dispute are Muslim, an expert in Sharia, known as a Datuk Yuthitham will be assigned as an extra judge to the bench.²⁰⁸ A Datuk is a knowledgeable local Muslim who is voted by imams to act as an expert. A Datuk is enlisted and appointed by the Ministry of Justice.²⁰⁹ He provides

²⁰³ Ministry of Education, Ministerial Regulation on a Centre for Islamic Education at a Mosque (Tadika) in Pattani, Yala, Narathiwat B.E. 2548 (2005), sec. 9.

²⁰⁴ Liow, *Islam, Education & Reform* 62-64.

²⁰⁵ Ramizah Wan Muhammad, 'Muslim Struggle for Shari'ah Courts in Thailand: An analytical study' (2014) 3 *International Journal of Islamic Thoughts* 47, 50.

²⁰⁶ Tamara Loos, *Family, Law, and Colonial Modernity in Thailand* (Cornell University Press 2005) 88-89.

²⁰⁷ Muhammad, *Struggle for Shari'ah Courts* 51.

²⁰⁸ Application of Islamic Law in Pattani, Narathiwat, Yala, and Satun Provinces B.E. 2489 (1946), sec. 3&4; See Sup. Ct. Decision 851/2551 (2008).

²⁰⁹ Piangporn Wisetsin, *Islamic Law and Inheritance Management: Satun Court Case Study* (Individual Study, Executive in the Court of First Instance Course class 10, Office of the Court of Justice, 2012) 14.

the bench with an opinion on the applicable Sharia. His legal opinion is final, and it cannot be appealed to the appellate court.²¹⁰

v. Observance of Religious Holidays

In 1974, Yala, Pattani, Narathiwat, and Satun were granted two extra holidays, Eid al-Fitr and Eid al-Adha.²¹¹ Interestingly, Songkhla, which is a nearby province and heavily populated by Chinese, was also granted these two extra holidays, starting in 2013.²¹² However, more interesting is the addition of Chinese New Year to Yala, Pattani, Narathiwat, and Satun, but not Songkhla, in 2012. This policy was seen as an attempt to appease the Chinese minority so as not to feel neglected.²¹³

D. Tier 3: Christianity, Hinduism, and Sikhism

Christianity, Hinduism, and Sikhism belong to the third category. The state recognizes them but there is no statutory delegation of administrative power to a specific body to regulate them. Instead, there are a number of religious organizations that are recognized by the DRA. These bodies can be deemed representatives, but not as exclusive as the Sangha Council or the CIC. They register as non-profit organizations under the Civil and Commerce Code so their orders have no statutory sanction. Of the three, Christianity is the largest with a population slightly above one percent. Hindu and Sikh populations are markedly smaller. All of them show no signs of an increase in population. Although these religions have been in contact with Thai society for a long time, they are viewed with a sense of ‘otherness’. They are the religions of foreigners, not Thais. Surprisingly, they actually enjoy better, more amicable, relationships with Thais than Islam does. Recognition appears to be symbolic, having no tangible effects on the three religions.

(a) Christianity

²¹⁰ *Ibid*, 12.

²¹¹ See the earlier discussion in Constitutional Symbolism section.

²¹² *Ibid*.

²¹³ *Ibid*.

Christianity forms a complicated relationship with Thailand. On the one hand, Christians are the purveyors of modernity, technological advancement, and quality education. They have built much social capital from offering these services to Thais. On the other hand, their arrival signals an existential threat to the survival of Buddhism and Thainess. Many Buddhists still see them as an untrustworthy rival.

Christianity in Thailand began in the seventeenth century CE with the arrival of Catholic missionaries. Priests came with the Portugal convoys, and, later, the French.²¹⁴ They were welcomed to stay and teach Christianity but they soon suffered from involvement in Ayutthaya's power struggle. As part of the attempts to dominate Siam, French missionaries persuaded King Narai to convert to Christianity, an act that upset many Thais who strongly believed in the concept of Buddhist kingship.²¹⁵ Finally, the anti-Western sentiment triggered a coup by Siamese aristocrats which expelled almost all foreigners, including missionaries, from the kingdom.²¹⁶ Christianity was almost totally wiped out except a few small communities of converts upcountry.²¹⁷

Christianity's second wave came in the mid-nineteenth Century when American Protestant missionaries arrived in Bangkok. They brought with them new technologies, for example, vaccines and printing, as well as the social services of schools and hospitals.²¹⁸ The government welcomed these new technologies but remained sceptical. They were allowed to establish churches but their missionary work was discouraged by the Bangkok government as well as local rulers in the North.²¹⁹ At a time when religion and political authority were mixed together, converting to Christianity meant that a person was no longer a subject of Buddhist Siam. Thus, a Christian Siamese was no longer Thai and, therefore, released from his civic duties, a grave concern for local lords who relied on corvée labour.²²⁰ In the early days, Christians tended to live in their own communities, forbidden by priests from participating in local festivals, which

²¹⁴ Seri Pongpit, *คาทอลิกกับสังคมไทย : สี่ศตวรรษแห่งคุณค่าและบทเรียน [Catholicism and Thai Society: Four Centuries of Values and Lessons]* (2nd edn, Komol-Keemthong Foundation, 1984) 21-28.

²¹⁵ Wyatt, *Thailand* 99-100.

²¹⁶ *Ibid*, 103-104; Seri, *Catholicism and Thai Society* 65-66.

²¹⁷ Keyes, *Why the Thai are not Christians* 269. Seri, *Catholicism and Thai Society* 67-72.

²¹⁸ Keyes, *Why the Thai are not Christians* 270.

²¹⁹ *Ibid*, 270-271; Easum, *A Thorn in Bangkok's Side* 218; Keyes see an act of challenging the Chiang Mai king as a boost to the missionary's authority.

²²⁰ Shane Strate, *An Uncivilized State of Affairs: Fascism and Anti-Catholicism in Thailand 1940-1944*, (2011) 42 *Journal of Southeast Asia Studies* 59, 63-64.

were Buddhist-animistic in nature.²²¹ The fact that Christian missionaries were operating at the height of colonization in Far East Asia exacerbated the problem. They were seen as accomplices of the Western colonial powers, a fear that has prevailed up until the present day. As a result, Christians were harassed by the authorities. At the beginning of WWII, the fascist-leaning government of Field Marshall Pibun persecuted several Christians on suspicion of French espionage.²²²

Hostility against Christianity persisted well into the 1970s, though mostly in a verbal form. Christian priests openly challenged and undermined Buddhism and Lord Buddha, inciting strong rebuttals from the Buddhist intelligentsia who tried to prove that Buddhism was on par with Christianity.²²³ The fight subsided after the Vatican Council II when Christians adopted a more amicable approach and also Buddhists' attention was diverted to Islam.²²⁴

Despite hostility, Christianity managed to gain a foothold. Their persistence and charity work convinced many marginalized people, for example, hill tribes, to accept Christianity.²²⁵ Another group comprises Christians fleeing persecution back home, e.g. Vietnamese and Chinese Christians.²²⁶ Christians have scattered throughout the country. Although Christianity has not been so successful at converting Thai aristocrats, many have been educated by Catholic and Protestant schools and have become powerful allies, especially when they are targeted by radical Buddhists.²²⁷ Discrimination against Christianity appears only in minor forms, such as restrictions on using Buddhist terms to describe their rites and dioceses.²²⁸ The most recent incident was in 2004 when the Christian group tried to promote a Christian-inspired book, The

²²¹ See inculturation of Catholicism in Nathaporn Thanomwong, การบริหารจัดการองค์กรประชาสังคมท้องถิ่น : กรณีศึกษาระบบการบริหารจัดการชมรมของอาสนวิหารพระนางมารีอากุสนินิรมล [*Governance of Local Civil Society Organization: Case Study of Mary Immaculate Conception Association*] (Independent Research Study, M.P.A. in local governance, Rambhai Barni Rajabhat University 2013) 63-64.

²²² See Strate, *An Uncivilized State of Affairs*.

²²³ See Thongchai, Buddhist Apologetics.

²²⁴ Seri, *Catholicism and Thai Society* 235-249.

²²⁵ Marten Visser, *Conversion Growth of Protestant Churches in Thailand* (PhD Dissertation, University of Utrecht, 2008) 64-65.

²²⁶ *Ibid*, 63.

²²⁷ Methina Utharos & Preecha Paimongsam, 'พัฒนาการทุนทางสังคมของคาทอลิกในสังคมไทย' [Development of Social Capital of Catholic in Thai Society] (2014) 22 Academic Journal of Humanities and Social Science, Burapha University 147, 157-159.

²²⁸ Jamnong Thongprasert, การประยุกต์ศาสนาและปรัชญาเพื่อการพัฒนาชีวิต และสังคมไทย [Adapting Religions and Philosophy for Development of Life and Thai Society] (Sakdisopha, 1984) in Nathaporn, *Governance of Local Civil Society Organization* 69.

Power of Living, which became a phenomenon. Due to its overwhelming popularity Buddhists campaigned for a confiscation of materials.²²⁹

There are several Christian groups operating in Thailand. The majority fall under five officially recognized churches: The Catholic Bishop's Conference of Thailand, the Church of Christ in Thailand, the Evangelical Fellowship of Thailand, the Thai Baptist Church, and the Seventh Day Adventist Church of Thailand. There are independent churches too. There is no law that requires all Christians to associate with the five recognized churches.

There have been attempts to promote a Christian administrative bill. A Christian administrative bill was introduced twice, once after the 2006 coup d'état and another after the 2014 coup d'état. Both attempts failed. The failures are not the result of hostility but more of inertia because the matter is not prioritized by the authorities. A Christian administrative bill would be more complicated than Buddhist or Islamic ones because it would have to recognize all five existing churches which could not be placed under a single head.²³⁰ Nevertheless, some Christians reacted angrily to the attempt, fearing that the law would subject them to the Buddhist government.²³¹

(b) Hinduism and Sikhism

Hinduism and Sikhism have the smallest numbers of followers among the five official religions. Religions of Indian diasporic communities constitute less than one percent of the population, with Hindu and Sikh communities not seeking expansion and preferring to preserve their religions within ethnically Indian communities. They enjoy a very peaceful relationship with the Thai authorities and their Buddhist neighbours.

Indian civilization arrived in mainland Southeast Asia in ancient times. Buddhism was widely adopted while Hinduism was discreetly incorporated into local beliefs, producing syncretic Buddhism. Hindu mythology greatly influenced Thai literature, arts, languages, religions,

²²⁹ HRRC, *Keeping the Faith* 487.

²³⁰ See an example of a draft (2007) at the Secretariat of the Senate
<https://library2.parliament.go.th/giventake/content_nla/2550_194.pdf>.

²³¹ Sinchai Chaojaroenrat, *Facebook* (9 May 2015) at
<<https://www.facebook.com/dr.sinchai.chaojaroenrat/posts/920138028031714/>> accessed 1 July 2019.

rituals, and politics.²³² The Siamese Court always had Brahmans to serve in public and private ceremonies. However, the influence of Hinduism discontinued with the arrival of the Europeans.

The modern wave of Indians arrived in the early Bangkok era.²³³ Indians from various part of the sub-continent came as the British's subjects, merchants and employees, and soon dispersed throughout the country.²³⁴ They then began building Hindu temples and Sikh Gurudwaras as their places of worship. In addition to being places of worship, these sites served as their cultural and social centres where oversea Indians and their children learned about their culture and strengthened their ties with the motherland.²³⁵

At present, there are three officially recognized Hindu organizations. They are registered as societies under the Civil and Commercial Code. The Hindu Dhamma Sabha oversees the Mariamman Shrine. Most members of the Hindu Dhamma Sabha are Shiv'ite Tamil from Southern India.²³⁶ The Hindu Samaj Society is located at Dev Mondir shrine. Members are mainly Vishnu'ite Punjabi.²³⁷ Another Hindu body that is recognized by the DRA is the Royal Brahmin Office which has served the Royal Palace since King Rama I. There are other Hindu societies but their purposes are more for socialization than religious purposes.

Hinduism presents a very interesting case. Due to its long history, the first wave of Hinduism was indigenized. Many famous shrines in Bangkok are part of the local syncretic culture. But when the second wave of Hinduism arrived, they were deemed foreign. The above-mentioned Hindu temples are not Thai, yet Buddhists are receptive of them. They visit these shrines to pray and make merit. Thousands attend Nawaratri at Mariamman Shrine as well as other

²³² Sophana Srichampa, 'India and Thailand: Soft Power Ties' (2015) 15 Silpakorn University Journal of Social Sciences, Humanities, and Arts 121.

²³³ A. Mani, 'Indians in Thailand' in K.S. Sandhu & A. Mani (eds), *Indian Communities in Southeast Asia* (ISEAS, 1993) 911.

²³⁴ *Ibid*, 911-917.

²³⁵ Sophana Srichampa, 'Religious and Cultural Transmission and Maintenance of the Indian Diaspora in Thailand' (2016) 9 Diaspora Studies 153, 154-155.

²³⁶ Mani, *Indians in Thailand* 923-924.

²³⁷ 'Hindu Samaj Founder' (*Dev Mandir*) at <<http://devmandirbangkok.com/hindu-samaj-founder/>> accessed by 18 June 2019.

ceremonies held by other Hindu temples. The independent group of Vishva Parichat holds Ganesh Jaturathi, which is attended by thousands of Thais.²³⁸

There are two recognized Sikh organizations. The larger one is Sri Guru Singh Sabha and the smaller one is the Namdhari Sangat of Thailand. Each of them belongs to a different Sikh sect.²³⁹

E. Tier 4: Other Religions

The constitutional guarantee of religious freedom extends well beyond the official five. A potpourri of various faiths is excluded from the DRA. Some of them keep a low profile while others can be very visible. There are no exact figures regarding the unrecognized groups but some notable examples include Judaism, Taoism, and Confucianism. The latter two are usually regarded as parts of Mahayana Buddhism. Judaism, on the other hand, is practised by non-Thais. There are synagogues in all big cities with sizeable populations of foreigners, for example, Bangkok, Chiang Mai, Samui Island, and Phuket.²⁴⁰ The number of resident followers may not exceed a few hundred but they claim to serve thousands of tourists every year. They might not enjoy any state support but they do not face any hindrances either.

There are also many religious groups that are excluded by co-religionists. The Church of Jesus Christ of Latter-Day Saints, or the Mormon Church, has been operating in Thailand for more than fifty years and has recruited both Thais and Western followers but is not recognized by the DRA.²⁴¹ So, too, has the Jehovah's Witness Church.

Other main examples are unconventional Buddhist groups. Soka Gakkai is a Mahayana Buddhist cult originating from Japan as a part of the new Buddhist movement which sprang up around the 1960s – 1970s in response to the rapid socio-economic transformation of East Asia.²⁴² It is highly organized and international, having chapters in many countries including

²³⁸ 'VHP Organizes Ganesh Chaturthi Celebrations in Thailand' *Hindu Post* (7 September 2016) at <<http://www.hindupost.in/world/vhp-organizes-ganesh-chaturthi-celebrations-in-thailand/>> accessed 1 July 2019.

²³⁹ Mani, *Indians in Thailand* 931-933.

²⁴⁰ The Jewish Community of Thailand at <http://www.jewishthailand.com/templates/articlecco_cdo/aid/913027/jewish/Tourist-Information.htm>.

²⁴¹ LDS-Thailand, at <<http://www.lds-thailand.org/History/brief.html>>.

²⁴² Mackenzie, *New Buddhist Movements* 68-74.

Thailand. However, it differs from the conventional Sangha in being led by lay leaders, not monks, and thus does not come under the Sangha Council. It operates as a non-governmental organization (NGO). Another new Buddhist cult is Fa Lun Da Fa from mainland China. Some domestic Buddhist groups fall into this category as well. The Bhikhuni, or the female monks, movement is not recognized by the Sangha Council, and Santi Asoke was expelled decades ago for its disobedience.

In general, the Thai government welcomes these religious organizations. They can register as private legal entities so they may own property and conduct activities. However, in the case of Fa Lun Da Fa, commonly known as Fa Lun Gong, there has been intervention from the government of the People's Republic of China. Although Thailand sees such intervention as political, not religious, freedom of religion suffers collateral damage. The Chinese government was accused of directing Thai police to arrest and deport protesters.²⁴³ When Fa Lun Da Fa tried to register an association in 2005, the government of China PRC strongly protested against it.²⁴⁴ The Ministry of Interior then refused to grant registration, citing diplomatic concerns. Fa Lun Da Fa brought the case to the administrative court, which, in 2015, ruled in their favour. Again, China strongly condemned the decision.²⁴⁵ Both Bhikhuni and Santi Asoke are subject to legal discrimination. The Bhikhuni are forbidden from holding ordinations within Thailand where the Sangha Council's jurisdiction reigns. Santi Asoke faced several charges but all were dropped.

F. Religions in Thailand: Thainess vs. Pluralism

This and the preceding chapters have shown the complex entanglement of Buddhism and other religions in Thailand's legal system. Religion is a public matter in which the state must get involved by promoting, protecting, and, most importantly, regulating. There is an extensive legal scheme that fosters, supports, and controls religions. The baseline of Thailand's religious policy is that all religions, regardless of their registration status, are free to practise and

²⁴³ Human Rights Watch, *Dangerous Meditation: China's Campaign Against Falungong* (Human Rights Watch 2002) at <https://www.hrw.org/legacy/reports/2002/china/China0102-05.htm#P771_205392> accessed 1 July 2019.

²⁴⁴ 'Beijing irked by Thailand's decision on Falun Gong' *The Nation* (7 August 2015) at <<http://www.nationmultimedia.com/politics/Beijing-irked-by-Thailands-decision-on-Falun-Gong-30266123.html>> accessed 1 July 2019; US Department of State, *Thailand 2012 International Religious Freedom Report* (2013).

²⁴⁵ 'Beijing irked by Thailand's decision on Falun Gong'.

disseminate their beliefs. The state accommodates religious belief as appropriate. However, they will not receive equal promotion. This 'free but not equal' policy has resulted in the multi-tier regulation of officially recognized religions.

The biggest factor that shapes religious policy is the ideology of Thainess, consisting of the nation, religion, and the king. Exercise of religious freedom must not, in any way, jeopardize the notion of Thainess, which inevitably leads to Buddhism's dominance. Despite there being no establishment of a state religion, the official narrative is that Thailand is a Buddhist nation. The state pays most attention and provides most benefits to Buddhism. The religion also enjoys the most special and intimate relationship with the state. It is regarded as the faith professed by the overwhelming majority of Thais from time immemorial. Its political and cultural importance results in a semi-agency status and a scheme of benefits. Its relationship with the state is governed by special administrative law and other complex sets of statutes, regulations, and policies. Any religious groups that attempt to compete with, or threaten the status quo of, Buddhism can face negative consequences.

However, there is a trade-off for Buddhism. Support and control are sometimes undistinguishable. More support naturally means more control. The drive to control Buddhism stems from the duty to support Buddhism as well as the need to control Buddhism's ability to legitimize and challenge those in power. As a result, Buddhism is subject to a very extensive monitoring scheme of its monks and practices. The state prioritizes the goal of the unity and purity of the Sangha and the sacrifice of individual freedom. The Sangha Council monopolizes Thai Buddhism, leaving little room for any unconventional interpretation of the Pali canon. As long as the Sangha does not challenge the state, it is ensured various privileges and its dominance in the political landscape. However, a sect or a monk that threatens the state's interests will be subdued. Buddhism must be separated from politics in the forms of the disenfranchisement of monks or disqualification by the ordination of local politicians. The purpose of the separation is not to create a secular state, but to honour or highlight Buddhism's moral high ground. Thus, monks are barred from politics only in the narrowest sense, from national and local elections, but they remain politically influential.

Ironically, followers of other religions in which the state has less stake, may enjoy greater liberty to observe and practise according to their personal conviction. Islam enjoys state-conferred recognition and benefits too, but for the less pious concern of national security. The

policy on Islam is influenced by its long history of service to the Siamese court as well as political necessity after Siam created the nation-state. The state's attention is unevenly directed towards Islam in the Deep South where violence is a political concern. As a result, many benefits are geographically specific. The third tier, Christianity, Hinduism, and Sikhism, as well as other unrecognized religions in the fourth tier, receive almost no attention. They are considered more foreign so they receive even less promotion. However, their status proves to be no hindrance to their practice, proselytization, or observance. The difference between the third and the fourth tier is minimal. The further a religion is placed from the state, the more flexible it becomes.

Recently, there has been a change at the constitutional level. Formerly, the presence of religion in constitutions is rather symbolic. This is evident from the refusal to establish Buddhism as the state religion. Drafters and advocates all agree that Buddhism is the *de facto* state religion. Still, constitution drafters have chosen not to manifest it in law. Yet there is a growing demand for more substantial recognition, resulting in a new, more obvious, policy directive, which is written in a less tolerant manner. This is also not a uniquely Thai phenomenon because the trend is also reported in Sri Lanka and Myanmar, and possibly in Laos and Cambodia too. Buddhist advocate groups are pushing for Buddhism's superiority. Is it possible that this phenomenon is fuelled by Buddhist ideology? Is Buddhism revealing its tendencies in law and politics? The subsequent chapters will examine such claims.

V. Thai Law of Religions and International Human Rights

The preceding chapters detailed Thailand's extensive involvement in religious affairs, especially those regarding Buddhism. They explored how law makers and enforcers deal with the topic of religions; how they recognize, control, accommodate, utilize, or even ignore, different religions in society. This is the product of two major forces that shape Thailand's legal arrangements. Traditional Buddhist belief has always been an important source of ideology and inspiration but the system at present is also influenced by modern liberal democratic ideas, which has been particularly the case since 1932 when the People's Party installed a democratic form of government. For the first time in Thai political history, the rights and liberties of the people were guaranteed in Thailand's first written constitution and have remained so ever since. This chapter, by switching from an exposition to evaluation of the subject, evaluates the legal system as it affects religions through the lens of international human rights norms. While the law claims to respect international human rights, there are many areas where the laws are incompatible with universal standards.

This chapter evaluates international human rights norms in the Thai legal system on two levels: the textual and the actual level. Often, an abstract protection does not translate into an actual practice. The formal law is sometimes ignored or abandoned. Therefore, it is crucial that human rights be considered at both the textual and practical levels.

The chapter begins with establishing what the international human rights regarding religions are. Then, it presents an overview of Buddhism and freedom of religion by asking how Buddhist-majority states fare in protecting religious freedom. It looks into various reports of religious violence and other forms of intolerance in which Buddhists are the actors and the victims. This overview portrays Thailand in a broader context, identifying the types of religious conflicts Thailand is actually experiencing before probing into the legal arrangements in a later section. It then follows the previous two chapters by considering the possibility of human rights violations in three sections: Thailand's constitutional arrangement, the multi-tier system, and individual freedom.

A. The Norms of International Human Rights regarding Religions

The first modern major document from which international human rights norms derive is the Universal Declaration of Human Rights (UDHR).¹ Most articles already indirectly protect a person's right to enjoy his religious choice, for example, freedom from slavery and torture, freedom of expression, and freedom of assembly.² But the two key articles that deal directly with religion are Article 2 and Article 18. Article 2 focuses on religious equality; a person is entitled to all rights and freedoms set forth in the UDHR, without distinction of any kind including religion.³

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ... religion ... or other status."

Article 18 addresses freedom of religion:⁴

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Article 18 recognizes that: First, there is the right to freedom of thought, conscience, and religion, which is considered an internal aspect, hence *forum internum*; Second, there is the right to manifest such belief, either in public or private, in the form of teaching, practice, worship, and observance, which is known as *forum externum*.

Freedom of religion is not without controversy. Contracting states, the majority of whose populations are Muslim, proposed the deletion of the freedom to change religion, reasoning its conflict with Islamic principles as well as scepticism over Christian missionary activities.⁵ Also, communist countries, led by the Soviet Union, proposed the limitation of freedom of

¹ For earlier development, see Malcolm Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press, 1997) chapter 3-6; Natan Lerner, 'the Nature and Minimum Standards of Freedom of Religion or Belief' in Tore Lindholm, W. Cole Durham Jr. & Bahia G. Tahzib-Lie (eds) *Facilitating Freedom of Religion or Belief: A Deskbook* (Martinus Nijhoff 2004) 65-67.

² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 4, 5, 19 & 20.

³ UDHR, art 2.

⁴ *Ibid*, art 18.

⁵ Evans, *Religious Liberty* 187-188.

religion subject to domestic law and public morality.⁶ Both proposals were rejected, which led to Saudi Arabia rejecting the entire UDHR. No Buddhist-majority country was involved in the drafting and voting.

Intensification of the Cold War delayed further development in human rights treaties until the UDHR was implemented by the International Covenant on Civil and Political Rights (ICCPR) in 1966, which provides greater details. So far, the ICCPR is the only treaty with binding effect on religious freedom. Its Article 18 confirms that:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

Paragraph 1 repeats that of the UDHR, that a person has the right to freedom of thought, conscience, and religion, and the freedom to the manifestation of such belief. The Human Right Committee's General Comment 22 states that freedom of religion must be broadly construed so as to mean it shall encompass monotheistic, theistic, non-theistic, as well as atheistic beliefs.⁷ Traditional and newly-established religions are entitled to the same freedom.⁸

⁶ *Ibid.*, 185.

⁷ UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4 [General Comment 22], para 2.

⁸ *Ibid.*

Paragraph 2 tries to compromise the longstanding controversy around the right to change religion. Originally, the draft ICCPR contained a clause recognizing the right of an individual to persuade others, but the Muslim-majority countries strongly resisted, arguing that the right to have religion did not include the right to change it, which was perceived as a threat to Islam.⁹ Proselytism, in their opinion, put a non-missionary religion like Islam at a disadvantage. Even other countries, Sri Lanka and China for example, sympathized and expressed their concerns for, in the past, they had suffered political intervention motivated by religious reasons, although they did not vote in favour of the deletion of such clause.¹⁰ Muslim-majority countries then proposed the right to maintain religion and freedom from coercion. As a result, Paragraph 2 of Article 18 reads “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”¹¹ The explicit clause on the right to change religion was dropped. However, subsequently, General Comment 22 confirms that the freedom to have or adopt a religion must include the right to change one.¹²

Unlike the UDHR, where all rights are subject to the same set of grounds for limitation, in the ICCPR, each right is subject to specific grounds. As in paragraph 3, internal freedom is deemed absolute but the right to manifestation can be limited if that limitation is prescribed by law, and is necessary for the protection of public safety, order, health, or morals or the fundamental rights and freedoms of others.¹³ While the grounds for limiting the freedom to religious manifestation are broad, it must not be interpreted as the destruction of any of the rights and freedoms recognized by the ICCPR or greater limitations than that provided in the ICCPR.¹⁴ Notably, limitation on religious manifestation on the grounds of national security is not permissible. Even more striking is the fact that freedom of religion is protected from derogation even in times of public emergency.¹⁵

⁹ Paul M. Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press 2005) 43-45, 54-57; Manfred Nowak, *CCPR Commentary* (2nd edn, N.P. Engel 2005) 410.

¹⁰ Taylor, *Freedom of Religion* 56.

¹¹ *Ibid*, 43; Nowak, *CCPR Commentary* 416-417; Evans *Religious Liberty* 198-199.

¹² General Comment 22, para 5.

¹³ See Nowak, *CCPR Commentary* 425.

¹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 13; Manfred Nowak and Tanja Vospernik, ‘Permissible Restrictions on Freedom of Religion or Belief’ in Lindholm et al, *A Deskbook* 150-160.

¹⁵ ICCPR, art 4.2; General Comment 22, para 1.

The fourth paragraph encourages states to take into consideration the parental right to ensure the religious and moral education of choice for their children.¹⁶ This is an area where Thailand is often criticized.

The above disagreement on the drafting of Article 18 is reflected in the absence of a subsequent convention on religious freedom.¹⁷ Only the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted as late as 1981 (the 1981 Declaration). The 1981 Declaration encourages the elimination of religious discrimination and intolerance, which it defines as any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.¹⁸ Its Article 5 reaffirms the right of the parent to provide their children religious and moral education according to their conviction.¹⁹

Article 6 elaborates upon the scope and meaning of the freedom of religion, by stating it shall include the following freedoms: (a) to worship or assemble, and to establish and maintain places for these purposes; (b) to establish and maintain appropriate charitable or humanitarian institutions; (c) to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; (d) to write, issue and disseminate relevant publications; (e) to teach a religion or belief in places suitable for these purposes; (f) to solicit and receive voluntary financial and other contributions from individuals and institutions; (g) to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief; (h) to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and (i) to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels. Article 6 demonstrates that freedom of religion is to be understood from a broader perspective. In addition to individual freedom, freedom of religion concerns the rights of an organized religion. This notion matches General Comment 22 which extends the rights of manifestation to acts of religious groups, for

¹⁶ Nowak, *CCPR Commentary* 431-433.

¹⁷ *Ibid*, 409. Also, see a list of international treaties which include or recognize FORB at Lerner, *Nature and Minimum Standards* 75-76; Evans, *Religious Liberty* 227-229.

¹⁸ UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55 (1981 Declaration), art 2.2.

¹⁹ The 1981 Declaration, art 5.

example, their right to choose their own religious leader, priests, and teachers, their freedom to establish seminaries or religious schools, and their freedom to distribute religious texts and publications.²⁰ Thus, in order to successfully maximize the enjoyment of religious freedom, freedom of religion goes beyond the protection of an individual to the issue of the state-church relationship and the autonomy of organized religions.

Another covenant that was promulgated in 1966 is the International Covenant on Economic, Social, and Cultural Rights (ICECSR). The ICECSR concerns the so-called second-generation rights that require state intervention. Its main supporters came from the socialist camp while the liberal-democratic camp advocated the ICCPR.²¹ The ICECSR does not add any extra guarantee to freedom of religion but it reiterates that rights enunciated by the covenant shall be enjoyed in a non-discriminatory manner.²² Individuals can access employment, fair wage, education, adequate standard of living, cultural rights and other welfares regardless of one's religious conviction.²³ The ICECSR therefore affirms the principle of religious equality as laid out by Article 2 of the UDHR.

From the above documents, Tore Lindholm identifies eight principles concerning freedom of religion:²⁴

- (1) internal freedom of thought, conscience, and religion,
- (2) external freedom of manifestation, in private and public, individually and collectively,
- (3) non-coercion,
- (4) non-discrimination,
- (5) parental right to ensure religious and moral education of choice,
- (6) autonomy of an organized religion,
- (7) limits of permissible restriction on external freedom, and
- (8) non-derogation.

²⁰ General Comment 22, para 4.

²¹ Ingvill Thorson Plesner, 'Religion and Economic, Social, and Cultural Rights' in John Witte and M. Christian Green (eds), *Religion and Human Rights: An Introduction* (Oxford University Press 2011) 317.

²² International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993 p. 3 (ICESCR), art 2.

²³ Plesner, *Religion and Economic, Social, and Cultural Rights* 318.

²⁴ Lindholm et al, *A Deskbook* xxxvii-xxxix.

In addition to the UDHR and ICCPR, another influential treaty is the European Convention on Human Rights (Article 9),²⁵ under which the European Court of Human Rights has produced several judgements and decisions concerning freedom of religion. The UDHR and ICCPR have later inspired several regional rights documents. These include the American Convention on Human Rights,²⁶ the African Charter of Human and People's Rights,²⁷ and the Final Act of the Helsinki Conference.²⁸

Thailand itself is a member of the Association of Southeast Asian Nations (ASEAN). In 2008, this loose regional cooperation that began in 1967 acquired an international juristic personality by adopting the ASEAN Charter.²⁹ Article 14 of the Charter mandates that 'ASEAN shall establish an ASEAN human rights body.'³⁰ 'Body' is ill-defined³¹ but, as part of the response to that mandate, ASEAN adopted the ASEAN Declaration of Human Rights (ADHR) in 2012. ADHR contains, in Article 22, the following clause on the freedom of religion: '*that every person has the right to freedom of thought, conscience and religion; that all forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.*'³²

On the one hand, the ADHR is a huge leap forward in the area of human rights in Southeast Asia, which is known for human rights abuses.³³ Indeed, it is the first regional human rights document in Asia.³⁴ ASEAN had previously been reluctant to address human rights issues.³⁵ On the other hand, human rights activists criticize it because Article 22 shows little resemblance to the ICCPR standard. Article 22 notably omits the explicit guarantee of freedom

²⁵ See Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (Oxford University Press 2001); Taylor, *Freedom of Religion* 7-9.

²⁶ Organization of American States (OAS), American Convention on Human Rights (22 November 1969) art 12.

²⁷ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art 8.

²⁸ Organization for Security and Co-operation in Europe (OSCE), Conference on Security and Co-operation in Europe (CSCE) : Final Act of Helsinki, 1 August 1975, part 4.

²⁹ Simon Chesterman, 'Does ASEAN Exist? The Association of Southeast Asian Nations as an International Legal Person' (2008) 12 Singapore Year Book of International Law 199, 200.

³⁰ Association of Southeast Asian Nations (ASEAN), Charter of the Association of Southeast Asian Nations, 20 November 2007 (ASEAN Charter) art 14.

³¹ Chesterman, *Does ASEAN Exist?* 209.

³² ASEAN, ASEAN Human Rights Declaration, 18 November 2012 (ADHR), art 22.

³³ See Thomas Fuller, 'Reporting on Life, Death, and Corruption in Southeast Asia', *The New York Times* (21 February 2018) at <<https://www.nytimes.com/2016/02/22/world/asia/reporting-on-life-death-and-corruption-in-southeast-asia.html>> accessed 19 September 2019.

³⁴ Jacklyn L. Neo, 'Realizing the Right to Freedom of Thought, Conscience, and Religion: The Limited Normative Force of the ASEAN Human Rights Declaration' (2017) *Human Rights Law Review* 1, 5.

³⁵ *Ibid*, 7.

of manifestation. It only states that intolerance, discrimination, and incitement must be eliminated, which falls short of the full protection of the external forum. Also, Article 22 does not specify the right to change religion, which is one of the most fundamental aspects of the internal forum.

Moreover, the grounds for restriction of religious freedom in the ADHR are more extensive than in the ICCPR. The exercising of human rights can be limited in order to protect the rights of others or to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.³⁶ As a result, rather than embracing the global norm into a local context, critics see the document as selecting and deflecting the norms in order to preserve the region's status quo. The ADHR was not expected to have any real impact other than window-dressing.³⁷ Another observer has a kinder view of the ADHR as aspiring, and possibly, initiating a dialogue in a desirable direction.³⁸

The shortcomings of Article 22 can be explained by the religious and legal diversity of ASEAN members. Southeast Asia is one of the most religiously diverse regions in the world.³⁹ Demographically, Theravada Buddhism dominates the mainland with the exception of Vietnam, which adopts Mahayana Buddhism and Taoism but also comes under communist influence. The archipelago is home to Islam, with Indonesia the largest Muslim population in the world. The majority of the Philippines is Catholic. All of these countries have tensions, or even violent conflicts, concerning the religious minorities of Islam and Christianity, depending on the locations.⁴⁰ Constitutionally, there are all types of constitutional arrangement concerning religion, from full establishment in Muslim nations and Cambodia, to a varying degrees of mild establishments of Buddhism in Theravada countries, and the officially atheist states of Vietnam, the Philippines, and Singapore.⁴¹ There is no mutual understanding of what is the proper arrangement so finding consensus on religious freedom in ASEAN is difficult. Article 22 is a compromise accommodating these diversities. This shortcoming is exacerbated by

³⁶ ADHR, art 8.

³⁷ See a remark by Singapore's Foreign Minister George Yeo in Chesterman, *Does ASEAN Exist?* 209.

³⁸ Neo, *Realizing the Right to Freedom of Thought, Conscience, and Religion* 7.

³⁹ *Ibid*, 8.

⁴⁰ see Melissa Crouch, *Law and Religion in Indonesia: Conflict and the courts in West Java* (Routledge 2013); Jacklyn L. Neo, 'Religious Freedom and the ASEAN Human Rights Declaration: Prospect and Challenges' (2016) 14 *The Review of Faith and International Affairs* 1, 5-8.

⁴¹ Neo, *Realizing the Right to Freedom of Thought, Conscience, and Religion* Neo (2017) 8-11.

another factor, that of poor human rights records. Countries in Southeast Asia have been, or recently were, governed by civilian and military autocratic leaders whose regimes have given rise to reports of human rights violations. ASEAN has adopted the convention of strictly respecting national sovereignty and not intervening in domestic issues, including human rights violations.⁴² Low interest in human rights results in the fact that, despite the mandate by Article 14 of the ASEAN Charter, there has not been a body to enforce the document. No human rights monitoring body, or a regional court of human rights, has been established. Thus, there is little about the ADHR that can contribute to the discussion. We have to rely on global human rights norms.

B. Overview: Buddhism and Religious Rights

Before looking specifically at Thailand, this section attempts to provide an overview of the relationship of Buddhism and religious rights. Buddhists constitute the majority in a number of Asian countries, within which live religious minorities of Islam, Christianity, or even their non-conventional compatriots. The question is, how do Buddhist-majority states deal with this diversity? Do they incite religious violence or discriminatory treatment? If so, how serious is the violation of religious rights? Although Buddhism cannot be pinpointed as the cause of these incitements and discrimination, this overview may at least demonstrate an interesting correlation, which will be further examined in subsequent parts. In pursuing the objective of demonstrating this correlation, religious rights are to be assessed from the perspectives of state and non-state actors. Though not being parts of the government, non-state actors are often encouraged, directly by the state, or indirectly through the ideology and aided by the legal system. Thus, they must be included.

A detailed discussion of Buddhism's view on human rights will follow in the subsequent chapter. Overall, Buddhism is often portrayed as a peace-loving religion so it is assumed to embrace the concept of human rights as well. Many Buddhist leaders see no contradiction and appreciate the contribution of human rights to human development according to Buddhist ideas.⁴³ However, despite the reputation, countries with Buddhist majorities regularly appear

⁴² *Ibid.*

⁴³ See Martin Seeger, 'Theravada Buddhism and Human Rights: Perspectives from Thai Buddhism' in Carmen Meinert and Hans-Bernd Zöllner (eds.), *Buddhist Approaches to Human Rights: Dissonances and Resonances*, (Bielefeld: transcript Publishers 2010).

at the top of the Pew Research Center's Index of Government Restriction (GRI). The GRI ranks countries according to the level of governmental restrictive acts related to religion. Scores are calculated from indicators ranging from physical abuses to hostile or discriminatory policies from the state, which are collected through the various reports of governments and international organizations.⁴⁴ Very high or high GRI means that citizens probably enjoy less religious freedom. Since 2006-2007, the first years during which Pew began analysing data, a group of Buddhist-majority countries – Myanmar, Laos, and Sri Lanka – regularly appeared in the very high or high groups. In 2013, except Cambodia, countries with significant Buddhist population (above 50 percent),⁴⁵ Myanmar, Laos, Sri Lanka, Thailand, Bhutan, had high or very high GRI.⁴⁶ Notably, almost all of them practise Theravada Buddhism except Bhutan which abides by Vajirayana Buddhism. In 2015, GRI remained very high or high for Bhutan, Myanmar, and Laos. Sri Lanka's, and Thailand's GRI dropped to moderate.⁴⁷ The only Buddhist-majority country that defied the trend is Cambodia, which always scores very low.

A more specific study is Fox's empirical study of religious freedom in ASEAN, which he compares with some other major religions in the world. He discovered no discernible pattern among Southeast Asia's Buddhist-majority countries.⁴⁸ The level of discrimination and hostility has remained unchanged since 1990. Myanmar and Laos have always been ranked very high, among the highest in the world.⁴⁹ Laos has adopted communist ideology, which is against religion in general.⁵⁰ Myanmar, in contrast, has switched from military dictatorship to democratic civilian rule, yet it remains hostile and discriminatory. Thus, the type of regime can be discarded as a factor. It is more likely that religion, which the two share in common, plays the contributing role. According to the research conducted by Pew and Fox, although it is rarely mentioned, Buddhist-majority countries witness higher-than-standard hostility. Contrary to conventional wisdom, Buddhism is probably the second most hostile religion in Southeast Asia, and possibly, Asia-Pacific.

⁴⁴ 'Methodology: Global Restriction on Religion', *Pew Research Center* (17 December 2009) at <<http://www.pewforum.org/2009/12/17/methodology/>> accessed 4 July 2017.

⁴⁵ Pew Research Center, *The Global Religious Landscape* (2012) 32-33.

⁴⁶ Pew Research Center, *Latest Trends in Religious Restrictions and Hostilities* (2015) 51-52.

⁴⁷ Pew Research Center, *Global Restrictions on Religion Rise Modestly in 2015* (2017) 50-51.

⁴⁸ Jonathan Fox, 'Freedom of Religion in Southeast Asia: An Empirical Analysis' (2016) 14 *The Review of Faith and International Affairs* 28, 33.

⁴⁹ *Ibid.*

⁵⁰ See Stephen Bailey, *Laos and Religious Freedom Studies* (2013) 11 *The Review of Faith and International Affairs* 64.

As religious restrictions are often committed by non-state actors as well, sometimes with the blessing of the state, Pew also devised the Social Hostility Index (SHI) which focuses on the hostility of non-state actors. The SHI tracks hostility, ranging from armed conflict, to sectarian violence, to intimidation, committed by private individuals and groups.⁵¹ Here, Buddhist-majority countries can be grouped into two. Sri Lanka, Myanmar, and Thailand are in the ‘high’ group. In 2009, Sri Lanka’s SHI was very high. Myanmar’s was high and Thailand moderate. However, in 2014, the SHI score for all three showed an increase to very high. In 2017, they all returned to high.⁵² These are countries which abide by Theravada Buddhism with a strong preference for Buddhism in their constitutions. The ‘low’ group consists of Laos, Cambodia, and Bhutan. Cambodia has remained low since 2009. Laos and Bhutan have fluctuated between medium and low. Overall, their SHI is lower than their GRI. Still, the same set of Buddhist-majority countries, except for Cambodia, shows very high, high, or moderate SHI, which is higher than the global average SHI score.⁵³

Of these Buddhist-majority countries, Myanmar and Sri Lanka were specifically mentioned in reports from Freedom of the World 2015 and the International Religious Freedom Report (IRFR) which noted the rise of religion-related conflicts.⁵⁴ The two countries showed signs of religious extremism and growing intolerance. Later, Myanmar, in particular, was put under the global spotlight following the Rohingya crisis where Buddhist monks openly incited violence against the Muslim Rohingya in Rakhine province, which justified and encouraged systematic ethnic cleansing by the Buddhist-centric Burmese Army.⁵⁵ Myanmar recently passed a series of laws on family that effectively prohibited inter-religious marriage. These laws attempt to preserve Buddhist dominance.⁵⁶ In Sri Lanka, there have been reports of attacks on Christian churches, personnel, and services.⁵⁷ Also, there are reports of hate speech and the desecration of Muslim sites of worship.⁵⁸ Violations of religious freedoms in other Buddhist-majority

⁵¹ *Methodology*.

⁵² Pew, *Global Restriction 2015* 53.

⁵³ See Pew Research Center, *Global Restrictions on Religion* (2009) 49-50; (2014) appendix 3, and (2017) appendix 3.

⁵⁴ Freedom House, *Freedom in the World 2016* (2016) 14-15; US Department of States, *International Religious Freedom Report for 2015: Executive Summary* (2016) 4&6.

⁵⁵ See Myanmar chapter in HRRC, *Keeping the Faith*; also the latest update on the crisis is at International Crisis Group, *Myanmar’s Rohingya Crisis Enters a Dangerous New Phase* (Asia Report no. 292, 7 December 2017), 12-13.

⁵⁶ See Melissa Crouch, ‘Constructing Religion by Law in Myanmar’ (2015) 13 *The Review of Faith & International Affairs* 1.

⁵⁷ A full account of attacks and harassments can be reached at US Department of States, *Sri Lanka 2016 International Religious Freedom Report* (2017) 4-9.

⁵⁸ *Ibid.*

countries are less serious or at least non-violent. Policies favour Buddhism, which receives more funding and attention. Even in Cambodia, there are reports of delay in the registration of religious organizations, confiscation of materials, or interruption of the dissemination of non-Buddhist religions.⁵⁹ Hostility is often directed toward Christians but Muslims suffer too.

The situation in Thailand is unique. Although it is not leading the group in terms of the SHI and GRI, its record shows both inter-religious and intra-religious hostility. There are reports of Buddhist-Muslim conflicts as well as sectarian disputes within Buddhism. Although its GRI is not ranked as high as Myanmar, Sri Lanka, or Laos, disputes sometimes turn deadly.

The most serious case of inter-religious violence is the Buddhist-Muslim conflict in the Deep South. The ethnoreligious conflict has resulted in Muslims being profiled by the Thai armed forces who have invaded their places of worship, and intervened in restricted practices for national security reasons. Muslim Malays have been on the receiving end of mistreatment through such acts as unwarranted detention, torture, or forced disappearance.⁶⁰ In retaliation, Muslim insurgents have attacked Buddhists, monks, and temples. Other religions have been caught in the crossfire too, for example, the burning of a historical Chinese shrine was reported by the Special Rapporteur, probably as the result of military operations at the nearby mosque.⁶¹ Elsewhere, there have been other examples too, though less systematic. In 1991, the government raided the office of the Unification Church, known as the Moonies.⁶² More recently, there have also been reports of the Thai government attempting to expel Falun Gong members and fleeing Rohingya Muslims.⁶³

The sectarian dispute within the Thai Sangha is unique as no other Buddhist country has reported similar incidents. When the Sangha is a part of the state, with monopoly power backed by law, conflicts with non-conformist groups are inevitable. Harassment of non-mainstream schools of Buddhism goes back as far as in 1991, when the Special Rapporteur reported that the combined force of police, local officials, the National Buddhist Office, and senior abbots

⁵⁹ See US Department of State, *Cambodia 2016 International Religious Freedom Report* (2017).

⁶⁰ UN. Office of the High Commissioner for Human Rights, 'Summary of Universal Periodic Review: Thailand' (2011) A/HRC/WG.6/12/THA/3, 7-8 & 10.

⁶¹ Note on Special Rapporteur on Freedom of Religion or Belief, 'Elimination of all forms of religious intolerance' (2004) A/59/366, 15.

⁶² Special Rapporteur on Religious Intolerance Report, (1991) E/CN.4/1992/52, 84.

⁶³ US. Department of State, *Thailand 2017 International Religious Freedom Report* (2018).

raided the radical Temple of Hoopa Sawan (Heaven Valley Temple).⁶⁴ Furthermore, there have recently been reports of other more well-known groups experiencing discrimination and harassment by the state. These include members of non-mainstream Buddhism such as the female monk movement, the Santi Asoke, and Dhammakaya.⁶⁵ Harassment comes in the form of excommunication, denial of registration, or legal action. In the case of the Dhammakaya, the state ultimately used violent force to take over control of the controversial temple resulting in a few deaths.

In all these cases, the laws contribute, either directly or indirectly, to the infringement of religious freedom. Some laws, for example, Myanmar's inter-religious marriage law, amount to outright discrimination against religious minorities. In other cases, the laws provide the government the authority to violate freedoms. Emergency law in the Deep South of Thailand allows security forces to intimidate Muslims while the Sangha Law enables the state to crack down on dissident groups. Even in the case of social hostilities, an anti-minority sentiment may be fostered by one religion's dominance, which is crafted through a complex web of laws and regulations. The rest of the chapter will analyse the Thai laws asking how they promote, protect, or conflict with the international human rights standards.

C. Constitutional Relationship

First and foremost, there is a question of whether Thailand's constitutional relationship with Buddhism itself violates international human rights standards. As has already been shown, indicators of the presence of Buddhism are few but important. The Thai constitutional system embraces Buddhism as part of its identity, and the head of state must practise Buddhism. Buddhist symbolism is incorporated into the language, calendar, national flag, and state ceremonies. Most importantly, the Constitution contains a provision that recognizes Buddhism as being under the state's support and protection. Is this constitutional arrangement permissible under international human rights norms?

The main concern, from the human rights perspective, is the establishment of a state religion. Although the number of countries with an established state religion has gradually decreased

⁶⁴ Special Rapporteur on Religious Intolerance, 'Report on Implementation of the Declaration' 83-84.

⁶⁵ See Streckfuss & Templeton, *Human Rights and Political Reform* 74-78; McCargo, *Buddhism, Democracy, and Identity* 164-167.

since when the ICCPR was signed, a significant number still retain some form of religious establishment.⁶⁶ The UDHR, the two covenants, as well as the 1981 Convention, all concern only the guarantee of the individual and group rights. They focus primarily on equality, internal and external freedom, and extend their scope to the autonomy of organized religions. They neither outlaw nor recommend a particular model of religion-state relationship. Thus, the conventional opinion is that an establishment is not a violation of religious freedom.

There are two arguments that support this widespread opinion. The first is historical.⁶⁷ During the drafting of the ICCPR, the idea of prohibiting an establishment had been proposed, debated, and ultimately rejected.⁶⁸ This rejection confirms that the form of state-religion relationship is irrelevant to human rights. Nonetheless, this idea has been criticized for it relies on the drafting history and, as a consequence, fails to take into account subsequent developments in the field.

The second argument examines the nature of establishment and argues that an establishment, in itself, does not present a human rights problem. In General Comment 22, the Human Rights Committee concludes that the fact that a religion is recognized as the state religion, or labelled as an official or traditional religion, or followed by the majority, does not impair enjoyment of any rights in the ICCPR.⁶⁹ This comment seems to resonate with the opinion provided by the Krishnaswami report. Commissioned to study discrimination in the matter of religious rights and practices, Krishnaswami cautiously approached the question, admitting that establishment had once been linked to the exclusion or subordination of other religions. However, he concluded that, at the time of his research, establishment did not necessarily lead to human rights violations. Some states with established religions were able to produce good records of religious freedom. Krishnaswami differentiated the latter from the former because their establishment survived as “a mere historical relic.”⁷⁰ The European Court of Human Rights

⁶⁶ One-fifth (19.2 percent) of states declare official religions in their constitutions. See Fox, *Political Secularism* 209-210.

⁶⁷ Nowak, *CCPR Commentary* 415.

⁶⁸ See details at Jeroen Temperman, *State-Religion Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance* (Brill 2010) 154-157; Cornelis Denis De Jong, *The Freedom of Thought, Conscience, and Religion or Belief in the United Nations (1946-1992)* (PhD Dissertation, University of Maastricht, 2000) 283-285.

⁶⁹ General Comment 22, para 9.

⁷⁰ See Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices* [Krishnaswami Report] (United Nations 1960) 46-47; also Nowak, *CCPR Commentary* 415.

finds that the state church system does not violate Article 9 of the ECHR as long as the state provides sufficient safeguards for the rights of individuals.⁷¹

This dichotomy of establishment as a mandatory belief system and as cultural heritage, which differentiates a repressive from an acceptable form of establishment, appears to be acknowledged by other scholars. De Jong notes that some states with an established church eventually undergo the process of secularization while others tighten their relationship with the dominant religions.⁷² Laborde distinguishes a full establishment from a modest one. A full establishment is characterized by the official support of one belief and inadequate respect of religious freedom while a modest establishment, despite the official support of a religion, provides religious freedom to other religious groups.⁷³ Ahdar and Leigh identify theocracy, *de facto*, and *de jure* establishments. A state may have a deep and complex relationship with a religion, guided by moral commitment, or it may have only a symbolic one.⁷⁴ They argue that *de jure* establishment, a mild form often found in western liberal democratic states, is not incompatible with religious freedom.⁷⁵ Brugger is less certain in his analysis of the six forms of relationship. The most extreme, the formal and material unity of church and state, is a clear violation of religious freedom. However, even when that unity is only formal, that in practice the state and the church are kept separate, this formal unity still presents a possible breach of international norms.⁷⁶

When assessing the state-religion relationship, the above studies show that simply a constitutional provision is insufficient to determine the actual relationship. Fox finds little correlation between particular constitutional clauses and the level of religious hostility.⁷⁷

In contrast, while the text of human rights documents says nothing about the form of the state-religion relationship, there is a shift in the opinions of Special Rapporteurs on the freedom of

⁷¹ *Darby v. Sweden* (1990) ECtHR Application no. 11581/85.

⁷² De Jong, *The Freedom of Thought* 286.

⁷³ Cecile Laborde, 'Political Liberalism and Religion: on Separation and Establishment' (2013) 21 *the Journal of Political Philosophy* 67, 67-69.

⁷⁴ Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press, 2013) 100-109.

⁷⁵ *Ibid*, 123.

⁷⁶ Winfried Brugger, 'From Hostility through Recognition to Identification: State-Church Models and their Relationship to Freedom of Religion' in Hans Joas and Klaus Wiegandt (eds), *Secularization and the World Religions* (Liverpool University Press 2009) 175-180.

⁷⁷ Fox, *Political Secularism*, 202-206; Jonathan Fox 'Out of Sync: The Disconnect between Constitutional Clauses and State Legislation on Religion' (2011) 44 *Canadian Journal of Political Science* 59.

religion or belief. In 1987, the Special Rapporteur warned that an establishment may not constitute intolerance but that it could lead to one.⁷⁸ In 2007, the Special Rapporteur report asserted that the legal distinction between religions carries the seed of discrimination.⁷⁹ Finally, in 2011, the Special Rapporteur admitted that the concept of a state religion could not be reconciled with the idea of human rights as it was almost impossible to avoid discrimination.⁸⁰

Opposition to the idea of establishment of a state religion focuses more on the practical effect. At the very least, an establishment, according to De Jong, creates a psychological discriminatory effect.⁸¹ The law will cease to reflect the diversity of that state and certainly invite discriminatory actions.⁸² Temperman argues that the establishment of a state religion is per se problematic. The presence of an establishment already has a coercive effect on internal freedom, as well as a violation of religious equality. It also leads to restrictions in manifestation. Temperman criticizes arguments in favour of establishment as being based upon legal theory and principle.⁸³ He points out that there needs to be the empirical socio-legal support of such a claim.⁸⁴ Martin and Finke identified a strong correlation between government favouritism and persecution.⁸⁵ Another work by Kettel confirms that correlation.⁸⁶

In conclusion, there seems to be consensus that a full establishment, of a constitutional endorsement of one religion, and actual policies favouring that particular faith, violates international human rights norms. However, a milder form of establishment, which can appear in various shades of favouritism, is inconclusive. Serious establishment often displays an official announcement in a constitution, recognizes the religion as a source of law, and shows explicit disregard for religious freedom. Mild establishment takes many forms, varying across

⁷⁸ Elizabeth Odio Benito, *Study on the Current Dimensions of the Problems of Intolerance and Discrimination on Grounds of Religion or Belief* (1987) E/CN.4/Sub.2/1987/26, para 88.

⁷⁹ Asma Jahangir, *Report of the Special Rapporteur on Freedom of Religion and Belief* (2007) A/HRC/6/5, para 26.

⁸⁰ Heiner Bielefeldt, *Report of the Special Rapporteur on Freedom of Religion or Belief*, (2011) A/HRC/19/60, para 66.

⁸¹ De Jong, *The Freedom of Thought* 286-287.

⁸² Heiner Bielefeldt, 'Privileging the 'Homo Religiosus'? Towards a Clear Conceptualization of Freedom of Religion or Belief' in Malcolm D. Evans, Peter Petkoff, and Julian Rivers (eds) *The Changing Nature of Religious Rights under International Law* (Oxford University Press 2015) 20.

⁸³ Jeroen Temperman, 'Are State Churches Contrary to International Law?' (2013) 2 Oxford Journal of Law and Religion 119, 127-128.

⁸⁴ *Ibid*, 132.

⁸⁵ See Brian Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century* (Cambridge University Press 2010); Roger Finke and Robert R. Martin, 'Ensuring Liberties: Understanding State Restrictions on Religious Freedom' (2014) 53 Journal for the Scientific Study of Religion 687.

⁸⁶ See Steven Kettel, 'State Religion and Freedom: A Comparative Analysis' (2013) Politics and Religion 1.

Catholic, Protestant, Buddhist, and even some Muslim countries. Nevertheless, in general, the closer a country moves toward a positive relationship with one particular religion, the more cause there is for concern.

The next question addresses Thailand's constitutional arrangement. Although Thailand has not established Buddhism as its state religion, its constitution is not secular. Buddhism is not a source of law and non-Buddhists are not deprived of basic rights, the two features that Temperman identifies with a full religious establishment.⁸⁷ However, surely Buddhism is treated differently. The head of state must profess Buddhism, while also patronizing other major religions. Symbolism, in the forms of calendar, flag, language, and public ceremonies is abundant. Most importantly, the state has the duty to protect and support Buddhism and other religions. Yet Buddhism receives more attention than others.

Positive identification with a particular religion without formal establishment is not uncommon. For example, the Constitution of the Republic of Ireland (1937) prohibits the state from endowing any religion but acknowledges that the homage of public worship is due to God, whose name is held with reverence.⁸⁸ It recognizes the special position of the Holy Catholic Apostolic and Roman Church as the Guardian of the Faith professed by the majority and the holy trinity is mentioned in the preamble.⁸⁹ This model is prevalent among Buddhist-majority countries. Most Theravada countries guarantee religious freedom while displaying some forms of favouritism for Buddhism in their constitutions. The group comprising Myanmar, Sri Lanka, and Thailand designates special status to Buddhism.⁹⁰ Only Cambodia has fully established Buddhism as its religion.⁹¹ Bhutan, another Buddhist-majority country of Vajirayana branch, refers to Buddhism as cultural and spiritual heritage.⁹² Only Laos remains comparatively secular, although the communist government has recently tried to forge a better relationship with Buddhism.⁹³ Temperman would identify these cases as having a positive identification with religion.⁹⁴ They fall short of a full establishment but are positive and, hence, likely to violate human rights.

⁸⁷ See Temperman, *State-Religion Relationships* 49-62.

⁸⁸ The Constitution of the Republic of Ireland (1937), sec 44(1).

⁸⁹ *Ibid*, sec 44(2).

⁹⁰ Constitution of the Republic of the Union of Myanmar (2008) art 361; The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), art 9; Thai Constitution B.E. 2560 (2017), art 67 para 2.

⁹¹ The Constitution of the Kingdom of Cambodia (1993), art 43.

⁹² The Constitution of the Kingdom of Bhutan (2008), art 3.1.

⁹³ See Bailey, *Laos and Religious Freedom*.

⁹⁴ Temperman, *State-Religion Relationships* 41.

When it comes to Thailand's highly dynamic constitutional arrangement, Krishnaswami's dichotomy of an establishment as a mandatory belief system and as past relic is very helpful. Thailand may contain both types of establishment. The king's religious conviction, symbolism, and public ceremonies should be viewed as symbols of the past. They are defensible on cultural and historical grounds because culture, history, religion, and law are unavoidably entwined in the premodern time. Of course, they still present coercion, from the perspective of the minorities who historically, ethnically, and religiously share little in common with the mainstream Buddhist Thais. However, the effect tends to be less violent. The King is the only person who has no real choice of religion. Besides, he must fulfill his role as the patron of all faiths, which all kings have honored.

However, more recent developments definitely cannot be considered as mere relics of the past. The constitutional changes from 1997 onward are the result of heavy pressure from Buddhist nationalists whose wish is to establish Buddhist supremacy. Although they justify the demand on the basis of cultural heritage and national identity, it aims to further Buddhism's dominant status and suppress religious minorities. Campaigns have become increasingly aggressive over years, weakening the former arrangements. Thus, Thai constitutions contain new symbolic and substantial elements regarding Buddhism. As Buddhism continues to expand its influence, Thailand is inching toward intolerance.

Still, it is premature to outright condemn this relationship between Thailand and Buddhism. Myanmar, Thailand, and Sri Lanka, with their weak establishment, all produce high scores on the GRI and SHI. Cambodia defies the dominant trend with its low GRI and SHI score but is the only Buddhist country with full establishment. This case is a reminder that actual policies must be assessed in order to determine how much influence the constitutional arrangement has over the overall legal design and the respect for human rights.

D. Religious Association Law

The nature of religious freedom is collective as well as individual. Religious freedom can never be fully realized unless a person can communicate his thoughts and engage in activities with a community of like-minds. Thus, it is important that religious freedom to which an individual

is entitled must be extended to a group, and that the group be granted a corporate status to administer its business properly. Lindholm's aforementioned eight criteria of the freedom of religion, i.e. manifestation, parental right to ensure religious education of choice, and autonomy, suggests that freedom of religion must be granted to an individual, a group, and a corporate person. Manifestation cannot be done without a group. Education needs a corporate body to deliver. This section discusses a corporate religion's autonomy and equality. The collective rights of a group will be treated together with those of an individual in the subsequent section.⁹⁵

As with other forms of groups or organizations, a faith community has the right to assembly and association which recognizes the right to peaceful assembly and to form and join an association.⁹⁶ However, a religious association is also protected as part of the freedom of religion. UDHR guarantees the right of a person to manifest one's belief, "*either alone or in community with others*" and "*in public or private.*"⁹⁷ The ICCPR follows the UDHR in that freedom of religion includes "*freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*" Under Article 18 of the ICCPR, religious organization receives better protection than under the provision on the freedom of assembly or association because of narrower, more specific, grounds of restriction. The 1981 Declaration is even more explicit about the rights of an organized religion. Activities in the list according to Article 6 cannot be done alone.⁹⁸ Teaching, studying, celebration, training, and soliciting for contribution can only be carried out in a community.

There are three concerns over the right of an organized religion: juristic personality, autonomy of a religious organization, and equality.

(a) Juristic Personality

⁹⁵ See the difference between the religious community and the separate religious institution at Johan D. Van Vyver, 'The Right to Self-Determination of Religious Communities' in Witte & Green, *Religion and Human Rights* 239-240.

⁹⁶ UDHR, art 19 & 20; ICCPR, art 21 & 22.

⁹⁷ UDHR, art 18.

⁹⁸ The 1981 Declaration, art 6.

Juristic personality is the basic step to enjoying other rights. Without a legal status, that religion cannot own property, enter into transactions, run charitable services such as schools or hospitals, or communicate effectively with the government as well as other religions.⁹⁹ Juristic personality is not supposed to be compulsory. An individual or a group should be able to practise without being required to register with the government. Yet if it wishes to, a group shall be granted juristic status without undue delay or hardship.¹⁰⁰

Thailand offers a two-step recognition process: first, a juristic person, and second, an officially recognized organization under the DRA. A juristic personality can only be created by the Civil and Commercial Code (CCC) or other statutes. In general, a juristic person under the CCC is considered a juristic person under private law while those created by specific statutes are juristic persons under public law.¹⁰¹ Only the Sangha Council and the Central Islamic Commission are established by specific statutes. Other religious organizations register under the CCC as a non-profit body, either as an association or foundation.¹⁰² Any religious group can register as a juristic person under this CCC provision. There is no specific prohibition for a religious juristic person. Nor is there any particular requirement that would hinder or obstruct a registration. Normally, there is no reporting of the government delaying or turning down an application except in the case of Falun Gong. Denial of Falun Gong's registration does not stem from the Thai authority's hostility toward its doctrine, but from outside pressure.¹⁰³ However, remedies are available. Falun Gong appealed the denial order at the Administrative Court and it was overturned.¹⁰⁴ A registered religious organization is able to enter into transactions, communicate through its representatives, and own properties.

In contrast, recognition from the Department of Religious Affairs (DRA) is not readily available. The criteria are straightforward in that the DRA requires a minimum membership of 5,000 followers, a distinct religious dogma, and abstinence from political activities. However,

⁹⁹ W. Cole Durham Jr., 'Facilitating Freedom of Religion or Belief through Religious Association Laws' in Lindholm et al, *A Deskbook* 322-324; W. Cole Durham Jr., 'Legal Status of Religious Organizations: A Comparative Overview' (2010) 8 *The Review of Faith and International Affairs* 3, 9.

¹⁰⁰ See Durham Jr., *Facilitating Freedom of Religion* 378-384.

¹⁰¹ Chanchai Sawaengsak, คำอธิบายกฎหมายปกครอง [*Administrative Law*] (27th edn, Winyuchon, 2018) 100.

¹⁰² The Civil and Commercial Code, sec 78 & 111.

¹⁰³ See the statement regarding Falun Gong from the PRC Embassy at 'Introduction to Falun Gong' *Embassy of the People's Republic of China in the Kingdom of Thailand* (21 February 2008) at <<http://www.chinaembassy.or.th/eng/ztbd/tj/t408940.htm>> accessed 19 September 2019 and the reaction toward the Supreme Administrative Court's decision in favour of the group at *Beijing Irked by Thailand's Decision on Falun Gong*.

¹⁰⁴ *Thailand 2015 International Religious Freedom Report* 4.

there have been no recent admissions. No official reason is given but in one case, the DRA rejected an application of the Hope of the Thai People Organization based on the objections of other recognized Churches.¹⁰⁵ The DRA appears to rely on a consensus of peers in order to avoid making decisions on theological questions. In effect, it raises the bar for a new entry and helps entrench the status quo of recognized religious organizations. As a result, the figure stands at 11 organizations from 5 religions. Their status can, in theory, change but it has never done so. The consequence, however, is minimal. Unrecognized organizations are still fully protected under the constitutions but they are not entitled to state subsidy and the privilege to participate in state functions.

(b) Religious Autonomy

In no circumstances may the state totally disassociate itself from management of religious affairs.¹⁰⁶ However, unless necessary, the state should respect the autonomy of that religious organization. Autonomy safeguards a religion at two levels: faith autonomy, and institutional autonomy. Faith autonomy means that the religion is free to interpret its understanding of dogma without undue restraints.¹⁰⁷ Institutional autonomy allows the organization to manage its own internal affairs, for example, appointing leaders and other clergies, providing proper religious education to followers, settling internal disputes, or determining membership.¹⁰⁸ Of course, the two autonomies are closely linked as institutional manipulation will certainly affect that institution's dogmatic understanding.

The relationship between the Sangha and the Thai state has changed very little over the past century. The current arrangement is almost identical to that established by King Chulalongkorn when he promulgated the Sangha Act in 1902. The traditional model of Buddhist kingship dictates that the king take great care of Buddhism and that Buddhism return such hospitality by endorsing the absolute rule. The two organizations, the temporal government and the Sangha, worked together under the command of the King.¹⁰⁹ The 1902 Act allowed the newly created Sangha to subjugate all strains of Buddhism, leaving and consolidating only those supporting the government. Despite the attempt to allow the Sangha Council to self-regulate,

¹⁰⁵ McCargo, *Co-optation and Resistance* 95.

¹⁰⁶ Krishnaswami Report, 50.

¹⁰⁷ Roland Minnerath, 'The Right to Autonomy in Religious Affairs' in Lindholm et al, *A Deskbook* 292.

¹⁰⁸ *Ibid.*

¹⁰⁹ Ishii, *Sangha, State, and the Society* 40-44.

finally, in 2017, the amendment to the Sangha law brought the whole council under the king's prerogative again.¹¹⁰ In addition to the law, the state utilized personal ties to control Buddhism. The first Sangha Raja was the king's half-brother, whom the king could trust to carry out the consolidation of religious hegemony.¹¹¹ This relationship continued into present-day Thailand. This archaic institutional arrangement means that there are many areas where the two entities of the civil service and monastic realms share their jurisdictions, allowing intervention and compromising the autonomy of the Sangha. This mutual relationship makes assessment difficult in determining whether the state has influence over the Sangha or vice versa. They seem to have a mutual goal in their understanding of Buddhist teachings so as to maintain their status quo.

The key questions are: What is the status of the Sangha? And how is it connected to the state? The Sangha Council has an ambiguous status. The current Sangha was created by the 1962 Sangha Act as the sole representative of the official Thai monastic order. In addition to the Sangha Council's absolute and expansive power over the Sangha, it is funded substantially by public money. However, each temple also makes a living through alms, donation, merit-making, and other commercial activities. Orders from the Sangha Council carry legal mandate, but it is not subject to the administrative court's jurisdiction.¹¹² Thus, it acts almost as if it is an agency of the administrative branch, albeit an independent one. In sum, while the rest of the Thai Sangha may be relatively free to conduct their own business, the uppermost, and most critical, level of the Sangha administration faces very intense intervention from the state. The most obvious case is the selection of the Sangha Raja, which at times involves drama and controversy. The state does not hesitate in intervening to coerce a desirable nomination. Two infamous incidents of note here are that of Phra Pimoltham during the Cold War, and, more recently, Somdej Phra Maha Rajjamangalacharn.¹¹³ Both of them belonged to the unwanted section of the Sangha, and so they were falsely charged in order to prevent them from nomination. The state went as far as amending the rule of the nomination to retroactively disqualify Somdej Phra Maha Rajjamangalacharn in 2017. The decision caused bitter division within the Sangha because most members of the Sangha Council, and the majority of monks,

¹¹⁰ Khemthong, *Thailand's Sangha*.

¹¹¹ Ishii, *Sangha, State, and the Society* 68.

¹¹² Thai Administrative Procedure Act B.E. 2539 (1996), art 5; Udomsak, *Roles of Abbots as Law-enforcement Agents*.

¹¹³ Phibul Choempolpaisal, 'Political Buddhism and the Modernisation of Thai Monastic Education: From Wachirayan to Phimonlatham (1880s–1960s)' (2015) 16 *Contemporary Buddhism* 428, 436–441; Jackson, *Buddhism, Legitimation and Conflict* 94–111.

supported Somdej Phra Maha Rajjamangalacharn's candidacy. The event serves as evidence of the state's intervention in the selection of a leader as well as settling internal disputes.

The state also helps discipline the overall Sangha. Any Buddhist groups that advocate 'dangerous ideas' that could undermine the Sangha Council's and the state's hegemony will face both monastic and legal consequences. In the past, the state pressed various charges against the Heaven Valley Temple, Santi Asoke, and Dhammakaya. Notably, these charges e.g. forest encroachment, tax evasion, or obstruction of justice, were clearly farcical. The law is instrumental in harassing and silencing dissidents for the Sangha's perceived unity. At the individual level, the Sangha Council, from time to time, asks the police or other agencies to help monitor the behaviour of monks.¹¹⁴ Expulsion is supposedly an internal procedure caused by breaking a serious vinaya offence. In reality, some high-profile disrobing cases are politicized. In 1962, Phra Pimoltham, the potential candidate for Sangha Raja, was disciplined by the monastic community and, later, trialed for communism, blocking his ascension to the Sangha Raja post. Informally, the military 'invited' and 'talked to' one monk who incited violence against southern Muslims to disrobe.¹¹⁵

As a result of heavy intervention, the state ensures that the Sangha will preach only what is beneficial to the status quo. The state may request the Sangha Council to order their men to select only sermons that align with the state's goal, e.g. to fight against Communism, to uphold Thainess, and to embrace capitalism.

In conclusion, the historical ties as well as the present legal arrangement allow for a significant level of state intervention in the administration of the Sangha. The government interferes in selecting a leader, formulating policies, disciplining monks, and settling some high-profile disputes. This entanglement is to ensure that both the theological interpretation and administrative policies of the official Buddhist order align with the state's interests. Yet this interest is also mutually shared as these interventions benefit some monks in their internal political struggles. Low autonomy is the price Buddhism is willing to pay for its dominance.

¹¹⁴ 'ก๊วกฤตศรัทธาคณะสงฆ์ : จับตาดูปฏิบัติการมหาเถรสมาคมรุกจัดระเบียบเข้มงวดการค้าเหล้าปี 2561' [Rescuing Faith in Sangha: Observing the Sangha Council Restoring Order in 2018] *Thairath* (31 December 2017) at <<https://www.thairath.co.th/content/1166383>> accessed 1 April 2019.

¹¹⁵ 'Thai government takes action against monk over anti-Muslim views' *Reuters* (21 September, 2017) at <<https://www.reuters.com/article/us-thailand-buddhism/thai-government-takes-action-against-monk-over-anti-muslim-views-idUSKCN1BW114>> accessed 1 July 2019.

Islam, the second largest religion, enjoys greater autonomy. Despite being established by the Islamic Act, the Central Islamic Committee (CIC) lacks legal authority so it is closer in similarity to the ordinary religious groups of Christianity, Hinduism, and Sikhism. It comes under the supervision of the DRA. There is no special agency responsible for Islamic matters or that liaises with the CIC and, subsequently, communication is more limited. The selection of the Chularajmontri is an internal process, and so is the election of the provincial Islamic committee. There are allegations of the state trying to manipulate the results in the Deep South but, overall, it is more isolated.¹¹⁶ Other recognized Christian, Hindu, and Sikh organizations as well as unrecognized religious organizations are left to manage their own interpretation of religious doctrines and internal administration. However, an officially recognized religious organization must be subject to the DRA's regulation, which dictates that an organization uphold Thainess which further implies Buddhist supremacy.¹¹⁷

(c) Equality

The third concern is that of equality. Autonomy can be achieved only when the state and the religion are institutionally separated. That separation helps maintain distance so the religion cannot influence the state in favouring or suppressing its rival. Theoretically, a state shall treat all autonomous religious organizations in a non-discriminatory manner. Yet more often than not, it is compelled by historical, political, or other reasons, to elevate a certain faith above others, ending up with a multi-tier structure as Thailand does. Although no texts ban such practices, and the international community seems to accept it as long as the discrepancy is not too great, doubt has been expressed as to whether such a pragmatic conclusion really respects international human rights norms.¹¹⁸ Thailand's multi-tier system seems to present a structural problem of inequality. It may register five religions but the constitutional arrangement, especially the policy guideline, dictates greater attention to Buddhism than to others. This bias is reflected in the state's protection and support of the five religions.

¹¹⁶ See McCargo, *Co-optation and Resistance*.

¹¹⁷ DRA Reg. on Religious Organizations (1969), rule 7.

¹¹⁸ Durham Jr., *Facilitating Freedom of Religion or Belief* 378-381.

The Penal Code provides universal protection to an object and place of worship, rituals and ceremonies, and priests of every religion.¹¹⁹ However, only the head of the Buddhist order, the Sangha Raja, is granted extra protection from defamation, a charge similar to *lèse majesté* of the temporal monarch.¹²⁰

Notwithstanding the universal protection in the Penal Code, the level of governmental support varies significantly. All recognized organizations are entitled to a list of supports. Some are trivial, such as a quota for missionaries and help with dispute settlement. Others are more important, for example, public recognition and invitations to participate in state ceremonies. The most important support is financial, that is tax exemption and other subsidies.

Different doctrines require different types and levels of support. The same support might not be compatible with what another religion needs. For example, there is no Buddhist law to apply to Buddhists like the Shariah. No other religions require a pilgrimage except Islam. Yet Buddhism does require special hospitals because its vinaya forbids female contact with monks, which is not a problem for other faiths.¹²¹ Unless the state chooses to strictly separate itself from religion, it will remain tangled in the impossible quest to equally provide all faiths with support and accommodation. The state also has different motives in deciding whether to accommodate a religion or not. Buddhism is the demographically, politically, most important faith. Yet Islam garners much of its attention because of security concerns. Of all the five religions, Buddhism receives the largest amounts in subsidies. Monks with titles or administrative positions are paid monthly allowances.¹²² Renovation of important temples is covered by the government.¹²³ Ceremonies are sponsored and promoted by the state.¹²⁴ There are state-run universities and a state-run hospital specifically for monks. The second largest religion, Islam, also receives a considerable amount of subsidy and other supports, but in different forms. The state helps facilitate the Hajj pilgrimage and even prepares funding for Hajj loans. There is a state-run Islamic bank to offer financial services according to Islamic

¹¹⁹ Penal Code, sec 206-208.

¹²⁰ The Sangha Act B.E. 2505 (1962), sec. 44 bis.

¹²¹ Vinaya Pitaka Vol 1: Vinaya. Mahāvi (1).

¹²² See National Office of Buddhism, *งบประมาณรายจ่ายประจำปีงบประมาณ พ.ศ. 2559 [Expense for Fiscal Year 2016]* (October 2015); ‘สาร+ภาพ: งบพุทธ 5.4 พันล้าน ‘พระไทย’ รายไม่แพ้ชาติใดในโลก’ [Infographic: 5.4 Billions Budget, Thai Monks the Richest in the World] *Prachatai* (25 May 2016) at <<https://prachatai.com/journal/2016/05/65946>> accessed 19 September 2019.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

principles. Islam-oriented curriculum and schooling are allowed. In the Deep South, Sharia is applicable in court for personal and family matters. Imams' salaries, as with senior Buddhist monks, are also paid by the state. The list may appear long, but the actual amount is considerably less than that of the Sangha.¹²⁵ Nonetheless, it raises tensions as some Buddhists accuse the government of favouring or accommodating Islamic beliefs over Buddhist ones. The third and fourth tiers enjoy no special benefits. State support is disproportionately granted to Buddhism.

There are benefits to individual priests in general, e.g. free public transport, but it is relatively insignificant. More serious benefit, exemption from the military service, is given in a discriminatory manner. A monk who has an honorific title or passes the advanced dhamma exam will not be enlisted.¹²⁶ Monks who passes a basic dhamma exam, an officially-appointed Imam or an assistant, an abbot and no more than three deputies of a Catholic church or no more than three reverends of a Protestant church, may be exempted from service, but shall be enlisted as reservists. However, this must be permitted by the governor of that province.¹²⁷ As a result, the Buddhist monk enjoys better treatment. A senior monk is fully exempted, while other entry-level monks enjoy partial benefits. There is no quota, unlike that imposed on Imams, abbots, and ministers. They may not have to serve two years compulsory military training, but they can be called upon in times of need. In comparison, the European Court of Human Rights has found that the Austrian government's multi-tier regulatory scheme, which withholds legal benefits e.g. military service, inheritance tax exemption, and obtaining a resident permit, of smaller or newer religious societies, constitutes discrimination and, therefore, violates the religious equality clause.¹²⁸ The court found no justifiable reason to treat different types of religious communities.

E. Individual and Collective Religious Freedom

¹²⁵ In comparison, see DRA, แผนการดำเนินงาน โครงการ/กิจกรรม ประจำปีงบประมาณ 2562 หน่วยงานกรมการศาสนา กระทรวงวัฒนธรรม [*Year Plan: Activities/Projects for Fiscal Year 2019, DRA, Ministry of Culture*] at <<http://www.dra.go.th/site.DraPlan/cmsdetail.Thai-31-251-1-0.245.html>> accessed 1 September 2019.

¹²⁶ The Military Service Act B.E. 2497 (1954), sec. 13(1).

¹²⁷ Ministerial Regulation No. 7 B.E. 2498 (1955).

¹²⁸ *Jehovas Zeugen in Österreich v Austria* (2012) Application no 27540/05; *Religionsgemeinschaft der Zeugen and Others v. Austria* (2008) Application no. 40825/98.

This section looks at the status of freedom of religion in Thailand. A constitutional guarantee is brief, yet it encompasses a long list of protection which this section is unable to fully examine. Some topics which are points of tension elsewhere, e.g. apostasy, blasphemy, or marriage, are absent from Thai law. For example, apostasy and blasphemy are not crimes. Marriage is civil in nature, except for the Muslim Malays in the Deep South. Thus, these topics are not worth discussing here. This section will focus on topics which are potentially not in accordance with international human rights norms regarding religious freedom. First, it discusses the freedom of religion clause in the constitution and the state's stance on religious freedom. Then, it moves on to vulnerable groups and areas of controversy.

(a) Freedom of Religion in a Constitution

Freedom of Religion has appeared in the constitution since 1932. It has never been repealed but has undergone gradual changes. In its latest form, the 2017 Constitution guarantees that:

*A person shall enjoy full liberty to profess a religion, and shall enjoy the liberty to exercise or practice a form of worship in accordance with his or her religious principles, provided that it shall not be adverse to the duties of the Thai people, neither shall it endanger the safety of the State, nor shall it be contrary to public order or good morals.*¹²⁹

Article 31 recognizes the internal freedom to profess religion, which is full and unrestricted, and the freedom to manifest a belief, which can be restricted according to reasonable grounds. Both aspects of religious freedom, internal and external, are essential parts of what the ICCPR guarantees. Although the constitution does not specify it, freedom to profess religion is generally understood as including freedom to change religion, the key issue of internal freedom. Converts and atheists enjoy constitutional protection. Only the king is required to be Buddhist, while other Thais are free to choose as they deem suitable. Yet a more critical assessment reveals a number of issues with Article 31.

The biggest concern is the 'trimming' of 'religion.' Previous constitutions recognized that the freedom to religion shall include religions, sects, as well as cults. No explanation was ever

¹²⁹ Thai Constitution 2017, art. 31.

given on what a sect and cult refers to. Nor was the clause ever invoked. However, Buddhism in Thailand consists of the mainstream Theravada, and the lesser popular Mahayana schools. Theravada Buddhism contains two sects of Thammayut and Mahanikai, while Mahayana is divided into Chinese and Vietnamese sects. Moreover, there are a few other Buddhist movements outside the official Sangha. Santi Asoka was expelled from the order and Bhikkhuni has never been accepted. Even the Dhammakaya Temple is considered non-Theravada. These outcasts may consider such wordings of the previous constitutions necessary for their survival. Moreover, there are other spiritual beliefs, for example, animism which is practised widely in the country. This fuller, inclusive, provision appears more aligned with the definition of ‘religion’ as given in General Comment 22, that the term shall be broadly construed, covering traditional as well as newly established ones.¹³⁰ When the 2017 Constitution reduced the clause to cover only ‘religion’, this change indicates fewer choices of beliefs. Non-conventional, unrecognized, and marginalized religious groups have become more vulnerable under the new constitution.

More change occurs with the freedom to manifestation. In the 2007 Constitution, freedom to manifestation means the freedom to observe religious principles or religious precepts or a form of worship in accordance with his or her beliefs,¹³¹ while the 2017 Constitution provides the freedom to exercise or practise a form of worship in accordance with his or her religious principles. The language of 2017 suggests that a person has less discretion because manifestation must follow in accordance with orthodoxy.

The ICCPR provides a few grounds to restrict the exercise of religious freedom: (1) public safety, (2) order, (3) health, or (4) morals or (5) the fundamental rights and freedoms of others.¹³² These terms are broad, but broader still is that in the 2017 Constitution which allows restriction on grounds of (1) the duties of Thai people, (2) the safety of the state, (3) public order or good morals. Public order or good morals are standard terms of restriction employed in law. They are catch-all phrases that are broad and potentially problematic as there are no exact definitions.¹³³ The duties of the Thai are redefined and the safety of the state are new additions to the category.

¹³⁰ General Comment 22, para 2.

¹³¹ Thai Constitution 2007, art. 37.

¹³² See permissible restrictions by Nowak and Vospernik, *Permissible Restrictions*.

¹³³ See Sanankorn Sothipan, คำอธิบายนิติกรรม-สัญญา [*Juristic Act-Contract*] (14th edn, Winyuchon 2009) 68-73.

The duties of the Thai people are described in Article 50, which is more stringent and demanding than before. The ten-point duties can be criticized as an expression of hyper-nationalism. For example, a person must (1) protect and uphold the three pillars of Thainess, (2) to defend the country, to protect and uphold the honour and interests of the Nation, and public domain of State, as well as to cooperate in preventing and mitigating disasters, (3) to strictly observe the law, (4) to enroll in compulsory education, (5) to serve in armed forces as provided by law, (6) to respect and not to violate the rights and liberties of other persons and not to commit any act which may cause disharmony or hatred in society, and (7) not to participate in or support all forms of dishonest act and wrongful conduct.¹³⁴ The aforementioned duties were only added in 2017. The 2007 version is much simpler with only the duties of protecting the trinity of Thainess, voting in an election, serving military service, conserving the environment, and obeying the law.¹³⁵ These new duties require a person to sacrifice personal freedom for the state's interest such as national identity, law and order, honour, and unity. These terms are broad and problematic as they may disguise an attempt to limit religious freedom, especially that of marginalized groups.

The new ground, safety of the state, raises another problem. The ICCPR does not allow national security as a justifiable ground for restriction. Even in a time of national emergency, religious freedom is not to be derogated.¹³⁶ Though the wording is different, safety of the state and national security are almost identical in meaning. The term further confirms the Thai state's hyper-nationalistic view of how religious freedom should be enjoyed. The violence in the Deep South is a case in point where Muslim Malay separatists clash with Buddhist-oriented security forces. The problem combines historical, ethnoreligious, and political problems together. The religious activities of local Muslims are viewed with suspicion and often interrupted by the state, whose ideology is to uphold the integrity of Thainess. Another case is the Dhammakaya Temple, whose unorthodox success and affiliation with former PM Thaksin Shinwatra convinced policy-makers that the controversial Temple posed a threat to the state's interests and the Sangha Council's survival.

¹³⁴ Thai Constitution 2017, art 50.

¹³⁵ Thai Constitution 2007, ch 4.

¹³⁶ General Comment 22, para 1.

What is absent from the 2017 Constitution is the non-derogatory, or non-discrimination, clause of the 2007 Constitution. In 2007, a person exercising his religious freedom is protected from “*any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religion, a religious sect or creed or observing religious principles or religious precepts or exercising a form of worship in accordance with his or her different belief from that of others.*” This clause has been removed without any reason being given.

Thus, the 2017 Constitution still guarantees the freedom of religion, internal and external freedom. However, the scope of religious freedom is noticeably more limited. The term ‘religion’ is not as broadly construed as it used to be. New grounds of restriction, broad and vague, are introduced. All these new developments make religious freedom susceptible to state infringement.

Freedom of religion has to be interpreted in light of two other clauses: equality and the state policy directive. All men are equal before the law and unjust discrimination on religious grounds is not permissible.¹³⁷ Another clause is the protection and support of Buddhism and other religions, as earlier discussed.¹³⁸ There is no wall separating the state and church in Thailand. In contrary, Thailand adopts an accommodating stance toward religious affairs, supporting and protecting freedom as mandated by the constitution. Accommodation is permissible in internal human rights norms as long as the aids and subsidies to one religion do not far outweigh that of others.¹³⁹ Different accommodation to different religion is also permissible if aids and subsidies are justified by objectives or reasonable criteria.¹⁴⁰ Therefore, accommodation is supposed to be on a, more or less, equal basis, as required by the equality clause. In general, the Thai state has long been willing to accommodate varying religious practices and beliefs. Legal exemption on religious grounds is not uncommon. Religious entities receive tax exemption.¹⁴¹ Traffic rules on helmets is waived for religious headgear, e.g. the Sikh’s turban.¹⁴² The Gender Equality Act does not consider religious practices to be discriminatory, making it in conflict with the Constitution’s equality clause.¹⁴³ The Anti-

¹³⁷ Thai Constitution 2017, art 27

¹³⁸ *Ibid*, art 71.

¹³⁹ General Comment 22, para 9.

¹⁴⁰ Taylor, *Freedom of Religion* 192-198; De Jong, *The Freedom of Thought* 222-224.

¹⁴¹ The Revenue Tax Code, section 42(29).

¹⁴² The Land Traffic Act B.E. 2522, sec. 122.

¹⁴³ The Gender Equality Act B.E. 2558 (2015), sec 17 para 2.

Animal Cruelty Act excludes a religious act from the definition of cruelty.¹⁴⁴ These exemptions stir no controversy in Thai society, indicating some level of expectation about the state's respect for religious belief and practices.

Yet ensuring equal accommodation is not easy. As stated earlier, different religions require different accommodations. Some need less than others. Buddhism, for example, does not demand a special diet, dress code, or daily ritual from its lay followers, while Islam expects all Muslims to observe daily prayer, halal food, financial principles, and fasting, and hence is naturally more accommodating. At the same time, since 1997, the clause 'Buddhism and other religions' suggests that the constitution drafters envision Buddhism to be treated more specially, particularly after the 2017 Constitution with its even more aggressive, protectionist, directive. This juxtaposition means that the state has to tread water very carefully. It is all too easy to tilt toward one particular religion and upset the others, to make them feel discriminated against. There seems to be no perfect solution. The following will explore how the Thai state implements its accommodation policy to different groups. The focus is on the minorities, which are more vulnerable to discrimination and intolerance.

(b) Non-Conformist Buddhist Movements

Since Buddha told monks to go forth, his men dispersed and wandered in all directions. Hence, there is no central authority, an equivalent of Vatican. Wherever a group of monks settles, a newly created sangha community should consult the vinaya as its guidance. As a result, there is great diversity within Buddhism. Each temple, each lineage, each senior monk has their own understanding of dhamma and vinaya which they pass on to their disciples. The creation of the Sangha Council to control this fissiparous tradition undoubtedly causes painful tension. This is a clash between an individual's freedom to interpret his own understanding of teaching and the autonomy of the Sangha Council to maintain order. On the one hand, the Sangha should not be forced to admit those who hold different views and beliefs. On the other, an individual should be free to practice according to his personal belief, even if it is contrary to the conventional version. He, or his group, should be able to break away and form a new group.

¹⁴⁴ Animal Cruelty Act B.E. 2557 (2014), sec 21 (5).

When an internal dispute arises, the state is supposed to remain neutral. The state must respect the autonomy of the organized religion to settle its own disputes as well as individual freedom. A religious dispute should not be decided by the secular body, incapable of capturing all the nuances of religion. In other words, heresy should not be a crime. What is problematic in the Thai case is that the Sangha has an absolute authority over Buddhism in Thailand. It is inclined to seek the state's assistance and the state is bound by its traditional duty to help sanction those who they consider heretic. Some prominent Buddhist scholars argue that by entering into monkhood, a person is voluntarily recanting part of his freedom.¹⁴⁵ This temporary limitation will only be restored when he leaves the monkhood. This view only legitimizes the use of state power on a non-conformist.

Sectarian division affects the formal division of Thammayut-Mahanikai less. There is much fighting between the two orders but the main concerns are those non-conformist movements such as Santi Asoke and Dhammakaya which the Sangha Council tries to suppress, expel, or ultimately eliminate. Santi Asoke tried to break away from the official order, and was expelled for disobedience. Dhammakaya was not expelled. But the government accused it of being as un-Buddhist in character and raided the temple on tax-related charges. The Sangha allegedly endorsed the raid by ignoring the incident. In both cases, the Sangha was regarded as being entitled to terminate the membership of those holding different understandings of its dogma. Also, both sects should be able to practise according to their beliefs and interpretations. However, despite the fact that there is no heresy law, Santi Asoke's leader was charged with dressing as a monk. The case served as a reminder that founding a new sect outside the official order is no easy task because the law subjects every sangha to the authority of the Sangha Council. The Sangha Council's monopoly over interpretation leaves Buddhists with no real choice of personal conviction. If they fail to follow mainstream Buddhism, they face legal charges.

Perhaps a more fortunate movement is that of Bhikkhuni, or the female monk movement. The Sangha refuses to recognize its existence, citing the fact that the Theravada lineage was long lost so women could never restore the ordination ceremony. Bhikkhuni, however, sought ordination from the Mahayana lineage.¹⁴⁶ It is, again, a dispute over the autonomy of the

¹⁴⁵ Seeger, *Theravada Buddhism and Human Rights* 72-73; Const Ct Decision 44/2542 (1999).

¹⁴⁶ Seeger, *The Bhikkhuni-Ordination Controversy* 162-163.

Sangha and women's freedom to practice according to their beliefs. Despite calls for the Sangha to revisit its interpretation of the vinaya and in fact, to modernize the reading with concepts like gender equality and human rights, the Sangha firmly declines to do so, asserting its autonomy to regulate membership and orthodoxy.¹⁴⁷ The unrecognized Bhikkhuni is tolerated but it is ineligible to receive any support from the state and its members are vulnerable to criminal charges of imitating monks. However, so far, there have been no serious attempts to eradicate the group.

(c) Conscientious Objection

Military conscription does not fall into the category of forced or compulsory labour which is prohibited by Article 8 of the ICCPR.¹⁴⁸ Article 18 does not directly prescribe the right to conscientious objection. Only the subsequent reading of Article 18, especially by the Human Rights Committee in General Comment 22, agrees that the right to conscientious objection can be derived from it.¹⁴⁹ However, conscientious objection is not mandatory and only a number of countries grant this right. In some cases, conscientious objectors may serve non-military services as alternatives, which may require longer term of service.¹⁵⁰

Thailand demands all able-bodied Thai men to serve up to two years in the armed forces. Compulsory military service is one of the civil duties in the 2017 Constitution, and so it is one of grounds for restriction of freedom of religion.¹⁵¹ Interestingly, to serve as a soldier is to learn to kill, which is very much against the first precept of Buddhism, which is to refrain from taking life, but there has never been any attempt to challenge the service on religious grounds. Even monks have to disrobe in order to enlist in the army and they are not treated any differently from others.

The Military Service Act provides exemption for religious men too; for monks, imams, and priests. This exemption is based not on conscience, but rank. A quota is imposed which is

¹⁴⁷ See this argument in Gila Stopler, 'Religion-State Relations and Their Effects on Human Rights: Nationalization, Authorization, and Privatization' (2017) 6 *Oxford Journal of Law and Religion* 474, 491-493.

¹⁴⁸ ICCPR, art 8.

¹⁴⁹ General Comment 22, para 11; Jose de Sousa e Brito, 'Conscientious Objection' in Lindhorm et al, *A Deskbook* 273-289; Temperman, *State-Religion Relationships* 210-211.

¹⁵⁰ Commission of Human Rights Res 1998/77 (1998) 4; OHCHR, *Conscientious Objection to Military Service* (Office of the United Nations High Commissioner for Human Rights, 2012) 37-44 & 65-68.

¹⁵¹ Thai Constitution 2017, art 50(5).

disproportionately skewed in favour of Buddhism. Any senior abbots are automatically exempted from serving in the military.¹⁵² Only up to three Imams and Christian priests from any district are granted such exemption but they must still be enlisted in the reserve.¹⁵³ Hindus or Sikhs are allowed to avoid the service. Clearly, this is religious discrimination against non-Buddhist Thais.

(d) The Muslim Minority

Islam deserves special discussion, aside from other religious minorities. First, it is the largest religious minority in Thailand. Second, its practices require more accommodation than others. Because of their observance of Islam, Muslims are often seen as being different from other Thais whose appearance and behaviour are harder to notice. Third, the violence in the deep south presents the state with various serious security concerns, requiring careful attention to the needs of the Muslim Malay population. As a result, the Muslim minority faces accommodation as well as discrimination. In recent years, accommodation for Muslim beliefs has advanced greatly. Relaxation of the head veil for government uniforms, Hajj promotion, Shariah application, and Islamic banking are four accommodations that the government provides. While Muslim uniform, Hajj promotion and Islamic banking are offered to all Muslims, Shariah is limited to those who live in the five southernmost provinces where Muslims are the majority and which is plagued by ethnoreligious violence.

In reality, despite many accommodating laws, Muslims, especially in the Deep South, are subject to hostility from government forces. The above laws on their accommodation are respected but their freedom of religion cannot be fully realized. The security situation means that Muslims are often profiled by security officers.¹⁵⁴ Military operations sometimes raid mosques or Islamic schools, desecrating sacred spaces and upsetting local Muslims.¹⁵⁵ Well-known Imams are taken into custody.¹⁵⁶ These actions, whether deliberately or not, amount to coercive or discriminatory treatment of Muslim Malays. Discrimination happens outside of the

¹⁵² The Military Service Act 1954, sec 13(1).

¹⁵³ Ministerial Regulation No. 7 B.E. 2498 (1955).

¹⁵⁴ Panarat Thepgumpanat & Panu Wongcha-um, 'Thai PM defends police monitoring of Muslim university students' *Reuters* (17 September 2019) <<https://www.reuters.com/article/us-thailand-muslims/thai-pm-defends-police-monitoring-of-muslim-university-students-idUSKBN1W21BA>> accessed 25 September 2019.

¹⁵⁵ HRRC, *Keeping the Faith* 505.

¹⁵⁶ *Ibid.*

Deep South too.¹⁵⁷ The state may not be the main actor but it prefers to remain silent on the issue.

(e) Religion in Public Education

Religion concerns public education in two aspects. First, it asks how religious education should be taught in the classroom. Second, it looks at how students are allowed or prohibited from engaging in religious manifestation in school.

The fourth paragraph of Article 18, ICCPR, ensures the right of parents and legal guardians to provide their children religious and moral education according to their beliefs.¹⁵⁸ However, Article 18 does not provide details of how religious education should be delivered. Parents and legal guardians are not necessarily providers. They are only entitled to have their children educated. In this sense, Article 18 regards children as the younger generation of that family, and that religious community, and therefore they ought to learn about their religious and cultural heritage. Thus, priority is given to parents and legal guardians to choose a religious education of choice.¹⁵⁹

Article 13 of the ICESCR also addresses religion and public education, describing the right to education as follows:¹⁶⁰

“The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

¹⁵⁷ Don et al, *Understanding Anti-Islam Sentiment in Thailand*.

¹⁵⁸ ICCPR, art 18 para 4.

¹⁵⁹ Taylor, *Freedom of Religion* 177-178 & 166-175. See a discussion on these many concerns by UNCRC Committee in Sylvie Langlaude, ‘Children and Religion under Article 14 UNCRC: A Critical Analysis’ (2008)

¹⁶ International Journal of Children’s Rights 475.

¹⁶⁰ ICESCR, art 13.

According to the ICESCR, the goal of education is to develop a child's personality, sense of dignity, respect for human rights, as well as prepare the child to become a good member of a free society, in which he participates and shows tolerance to pluralism. The ICESCR therefore focuses more on the child's and the society's interests.¹⁶¹ A child must be educated for his full development and society expects education to produce a desirable citizen. This idea is confirmed in Article 29, the Convention on the Rights of the Child (CRC):¹⁶²

"1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment."*

Thus, there is tension in providing education to a child, and three interests must be taken into consideration: the parents, society, and the child himself. The latter becomes increasingly important as he reaches maturity. A child is entitled to learn about his roots, about his parent's community and cultural roots, but he must be taught about human rights, tolerance, and the more pluralistic society, too.¹⁶³ The question is how should a public institution balance all

¹⁶¹ See Geraldine Van Bueren, 'The Rights to be the Same, the Rights to be Different: Children and Religion' in Lindholm et al, *A Deskbook*.

¹⁶² Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, art 29.

¹⁶³ Carolyn Evans, 'Religious Education in Public Schools: An International Human Rights Perspective' (2008) 8 Human Rights Law Review 449, 449-450.

parties' interests in designing its curriculum for the maximum benefit of the child, religious community, and society as a whole.

There is a wide array of choices for dealing with religious education, from total exclusion, meaning only a strictly secular education, to the study of multiple religions, to the teaching of a single religion.¹⁶⁴ All of these models are permissible as long as they do not amount to coercion or indoctrination. Even a curriculum that is tilted toward a particular religion, but allows an opt-out, might still be acceptable unless that exemption or opt-out is unreasonably impractical.¹⁶⁵

Thais feel strongly that Buddhism should be a compulsory subject in education. Any attempt to alter this will be seen as an act of sabotage against the nation.¹⁶⁶ When modern education was introduced, the state lacked enough manpower so the duty to provide basic education rested with Buddhist temples all over the country, who had long taught traditional education. This arrangement continues to the present day. A large number of schools in Thailand are still located on monastic premises. Naturally, Thailand's national curriculum is Buddhist-oriented, with the Special Rapporteur mentioning this concern in 1998.¹⁶⁷ There has been an attempt to address the problem. Since 2001, the Ministry of Education (MOE) set the new national curriculum. Subsequently, each school is free to design its own school curriculum but it must meet the standards and objectives set in the national curriculum.¹⁶⁸

The national curriculum requires a school to include religion as part of the social studies cluster, which covers the topics of civic education, economics, history, and geography.¹⁶⁹ The use of the term 'religion' suggests that a school has freedom to determine how to deliver their religious education in a neutral manner. However, the national curriculum also sets the standard whereby a student must meet the following qualities: (1) have a love of the nation, religion, and king, (2) be honest, (3) have discipline, (4) have passion, (5) be self-sufficient, (6) be

¹⁶⁴ *Ibid*, 461.

¹⁶⁵ Leirvåg et al. v Norway (1155/2003), CCPR/C/82/D/1155/2003 (2004); Evens, *Religious Education in Public School* 466-469.

¹⁶⁶ One widespread example is that of Boonsom Martin, an Education Minister in 1977-1979, who was responsible for a curriculum revision. Because he was a Christian, extremist Buddhists excused him of sabotaging Buddhism by removing Buddhism from the national curriculum.

¹⁶⁷ Abdelfattah Amor, (22 January 1998) E/CN.4/1998/6, para 59.

¹⁶⁸ National Education Act. B.E. 2542 (1999), sec 23, 24, 27 & 28.

¹⁶⁹ Ministry of Education, Core National Curriculum, B.E. 2551, 16-17.

hardworking, (7) have a love of Thainess, and (8) be public-minded.¹⁷⁰ Clearly, the goal of this new curriculum is to reinforce Buddhism's dominance.

Specifically, for the social studies cluster, the curriculum dictates that the objective of religious study is to teach students to learn and appreciate 'Buddhism or his/her religion' for peaceful coexistence.¹⁷¹ There provides a list of the content for Buddhism, from the life of Lord Buddha, to basic Dhamma, to the contribution of Buddhism to Thai society. Students must also be able to perform some basic Buddhist rituals and practice meditation.¹⁷² The curriculum is less specific about non-Buddhist courses, vaguely stating that they must be equivalent to the Buddhist one. In reality, most schools provide a class on Buddhism, and not religion as a neutral subject.¹⁷³

There is no opt-out for an individual non-Buddhist student. However, the school may substitute the Buddhist-oriented curriculum with a standardised Islamic curriculum if there are sufficient numbers of Muslim students.¹⁷⁴ There is no standardised curriculum for other religions. Yet Christian, Hindu, and Sikh schools are permitted to operate, teaching their religion alongside the official curriculum.

Religious education in Thai public schools is an example of a religiously-neutral policy that is skewed toward Buddhism in its implementation. The language of the cluster leaves freedom for schools to determine their course designs, but the subsequent guideline encourages teachers to adopt a Buddhist-oriented approach.

A less frequently discussed topic is religious manifestation. The MOE demands morning prayer every morning before class commences.¹⁷⁵ Prayer is prepared by the MOE. Non-Buddhist students are advised to remain silent but the question of peer pressure and discrimination remains. The policy discriminates against non-Buddhist students as well as forces Buddhist

¹⁷⁰ *Ibid*, 11.

¹⁷¹ S.1.1 and S.1.2 objectives in *ibid*, 138-145.

¹⁷² *Ibid*.

¹⁷³ Interview with Athapol Anunthavorasakul, Associate Professor, Faculty of Education, Chulalongkorn University (Chulalongkorn University, 2 April 2018). The problem is exacerbated because the MOE, since 2001, no longer holds a monopoly over textbooks. Several publishers hire Buddhist monks to write their textbooks so the available materials in the market are mostly Buddhist-oriented, offering little about other religions to be learned.

¹⁷⁴ Ministry of Education, National Islamic Curriculum B.E. 2551 (2008).

¹⁷⁵ Ministry of Education, Regulation on Students' Prayer B.E. 2503 (1960), sec 4.

ones to practice without their consent. Freedom to manifestation should include the freedom not to manifest, which this policy does not take into account.

Overall, Thailand's public education policy fails to handle the tensions in developing a good citizen, who appreciates their own Buddhist roots as well as respects other religions and the value of human rights. The national curriculum may allow leeway to provide non-Buddhist education, but this alternative is not always possible in every school.

F. Conclusion

Despite Thailand's commitment to international human rights norms, it becomes clear that religious freedom is not always rigorously observed. The themes that come up throughout the evaluation of Thailand's law concerning religions are that (1) the free but not equal treatment of religions, and (2) the lack of separation between religions and state. The first theme results in a hierarchical regulatory scheme with Buddhism as the foremost faith and systematic discriminatory treatment of other religions. This is evident in areas concerning the head of state, symbolism, and policy guidelines from the constitutions to DRA's multi-tier regulations. The second theme leads to heavy entanglement in religious affairs. On one hand, the state offers accommodation to facilitate religious requirements. On the other hand, accommodation often comes with control. Eventually that means the lack of freedom in an individual and of autonomy in an organized religion. The state and the monarch are ready and willing to intervene or manipulate a religion in order to preserve the existing political order, for example, the appointment of Sangha Raja, its monitoring of monks, as well as its involvement in Islamic affairs.

Thailand's legal relationship with religion is only the tip of the iceberg. It represents a much larger system that is imbued with Buddhist traditional thought. Clearly Thailand has not broken away from its pre-modern past and Buddhist constitutionalism permeates many other areas of law.

In the second part of this thesis, the following three chapters will discuss the idea of Buddhist constitutionalism through three topics, of politics, law, and natural rights. Understanding Buddhist constitutionalism in terms of politics, law, and natural rights will help explain the

current problematic political and legal arrangements. They explain how the state, and its ruler, position itself with Buddhism and its representative, the Sangha. They clarify how and why Buddhist-majority states justify the violation of norms of human rights in favour of Buddhist dominance. These theories are essential to understanding the Thai state's relationship, not only to Buddhism, but non-Buddhist religions as well.

VI. Traditional Buddhist Constitutionalism: Political Order

The previous chapter shows how the Thai state has interpreted and adopted the norms of human rights in the area of the state-religion relationship. The universal idea is not translated perfectly into the local context. There are discrepancies, for example, regarding religious equality, individual freedom and institutional autonomy, and public education. These discrepancies are the result of compromises between universal and traditional values. Despite more than a hundred years of modernization during which Thailand has experimented with liberal democratic values, traditional Buddhist ideas remain strong in the minds of both rulers and the populace. They are contested, reinterpreted, yet never fully replaced. Political Buddhist beliefs remain a force to be reckoned with. This incompatibility results in the violation of personal freedom.

This chapter is the first of three the objective of which is to identify and discuss traditional Buddhist values: on political order, law, and natural rights respectively. Their influence shape the current constitutional and legal arrangements. This chapter will focus specifically on Buddhist political theology that concerns the question of Buddhist views on the state, kingship, and the relationship with its representative, the sangha.

For the purpose of identifying political theology, the main concern is which forms or sources of Buddhism have political salience; unlike soteriological or canonical Buddhism, what shapes Thais' understanding of Buddhist political and legal order is the popular perception or lived reality. Conventional sources, such as the canonical text of Tipitaka, are inadequate. Although the tradition regards Tipitaka as the words of Buddha himself,¹ generally Thais learn their Buddhism from the supplementary materials of local literature, lore, and practices. Even at present, the majority study Buddhism from an abridged Thai translation prepared by the Thai state as a measure to craft and guard orthodoxy.² Emphasis on local materials is particularly true for Buddhist political theology. Indeed, the rationalist reforms under King Mongkut (1880) and Buddhadasa (1950-1960), which disregarded local elements and encouraged the return to the canon as the true source of Buddhism in other topics, tend to avoid attacking the local

¹ Gethin, *The Foundations of Buddhism* 46. See Steven Collins, 'On the Very Idea of the Pali Canon' (1990) 15 *Journal of the Pali Text Society* 89.

² Phibul, *Political Buddhism* 429-434.

materials when it comes to the topic of political ideology. As a result, when it comes to law and politics, non-canonical sources are really influential and more widely disseminated. Thus, to find out how Buddhism influences the design of law and politics, focusing on the lived reality of Buddhism is more advisable than on the textual sources.

A. The Non-Violence Paradox

Before the chapter delves into the details of Buddhist kingship, sangha, law, and natural rights, discussion should begin with the problem of violence. Controlling and channeling violence are the *raison d'être* of state-building and the construction of political and legal systems. Failure to uphold a political order, to observe the rule of law, and respect natural rights often results in violence. Despite the reputation of being the religion of peace, Buddhist-majority countries have displayed Buddhist-incited violence in many forms, both toward their own people and non-Buddhists, as the previous chapter has shown. While Buddhism has produced advocates for peace such as Aung San Sui Kyi and Dalai Lama, Tatmadaw (the Burmese Army) and Khmer Rouge also claimed inspiration from Buddhism to commit atrocious crimes.³ Perhaps the best known case in Thai political history is that of the famous preacher Phra Kittivuttho, who incited royalist militias to slaughter left-leaning student activists in the 6 October 1976 massacre.⁴ The reputation of peace and the reality of aggression present the tension within Buddhist doctrines, both condemning and justifying the use of force.

In principle, Buddhism rejects violence. The first precept is to refrain from the taking of human and animal life.⁵ This respect for every form of life stems from the belief in incarnation that a being is reborn in various forms, of high and low status, until it learns the noble truth and leaves for nirvana.⁶ The story of Buddha sets the example. He had been born a white elephant, a deer, a monkey, a quail, and even a vulture.⁷ Thus, all lives have the potential to ascend, be

³ Sallie B. King, *Buddhism and Human Rights* in Witte & Green, *Religion and Human Rights* 104-106; see Charles Keyes, 'Buddhism, Human Rights, and Non-Buddhist Minorities' in Thomas Banchoff and Robert Wuthnow (eds) *Religion and the Global Politics of Human Rights* (Oxford University Press 2011).

⁴ Prajak Kongkeerati, การลดทอนความเป็นมนุษย์ พื้นที่ทางศีลธรรมและความรุนแรง: จาก "จำคอมมิวนิสต์ไม่บาป" ถึง "กำจัดเสื้อขนานนามแผ่นดิน" [Dehumanization, Moral Space and Violence: From 'Killing Communists is not Sinful' to 'Getting Rid of Traitor'] (2016) 14 Fah Deaw Kan 39.

⁵ Gethin, *The Foundations of Buddhism* 110.

⁶ Paul Waldau 'Buddhism and Animal Rights' in Damien Keown (ed) *Contemporary Buddhist Ethics* (Routledge 2000) 85-88.

⁷ Nigrodha-miga-jataka; Vanarinda-jataka; Sakunagghi-jataka; Gijjha-jataka. See Caroline A. Rhys Davids, *Stories of the Buddha: Being Selections from the Jataka* (Dover, 1989).

interconnected, and precious. Most precious is a human life because the human has the unique ability to attain the noble truth.⁸ Being a Buddhist means refraining from killing, and also avoiding causing others to suffer, both physically and mentally. Kittivuttho subsequently struggled to justify his incitement, defending his speech by referring to the *Kosi* story in which a horseman kills his untrainable horse.⁹ But *Kosi* is generally understood as a metaphor and that Buddha does not approve so literally. This explanation is seen as a flimsy coverup for political hate speech. There is no place, it seems, in Tipitaka that justifies killing or the use of force. Buddhism is a very tolerant religion.

Buddhism's tolerance is the result of the middle-path concept; a person should not take anything to the extreme. Buddha would defeat a wrongly-held view in a debate but he would never physically harm those who held such a view.¹⁰ Buddha was critical of the Hindu caste system but he avoided confrontation, not demanding radical social or political change. The split between Theravada and Mahayana differs from the Catholic-Protestant schism. It happened naturally when the two groups moved further apart. Buddhism is willing to compromise its viewpoints and actions rather than advocating for them. In other words, Buddhism prefers peace to conflict.

This moderate stance is aided by Buddhism's understanding of life that it spans countless millennia. A person has more than one chance, in one of his next lives, so he may err in this present life.¹¹ A person is not required to choose the right path. The path to the truth might take time but he is approximating the goal.

This tolerant attitude helps explain why, despite the categorical rejection of violence, Buddhists often adopt pragmatic positions when dealing with violence. Buddhism accepts violence as part of a mundane life. Although the hypothetical king must rule by compassion, Buddha analogizes a sinful person's suffering to a bandit being tortured by the king.¹² Apparently, he is well aware of such a practice which he is careful to neither endorse nor condemn. Twice,

⁸ King, *Buddhism and Human Rights* 107; See Waldau, *Buddhism and Animal Rights* 96-97 for criticism of such view.

⁹ Charles F. Keyes, 'Political Crisis and Militant Buddhism in Contemporary Thailand' in Bardwell L. Smith (ed) *Religion and Legitimation of Power in Thailand, Laos, and Burma* (Anima Books 1987) 153-155.

¹⁰ Schonthal, *Tolerance of Theravada Buddhism* 182-185.

¹¹ See Suwanna, *Buddhis Pluralism and Religious Tolerance* 201-202.

¹² Sutta Pitaka Vol 6: Sutta. Ma. U.

Buddha was able to save his Sakya clan from a massacre by King Viphathaka.¹³ He failed the third time but Buddha accepted it as the karmic consequence from the Sakyans' past lives.¹⁴

More telling is violence in support of the monastic life. While a monk is strictly prohibited from even the slightest form of violence, for example, severing part of a plant,¹⁵ lay persons are not required to do so. The tension lies in the monastic-lay communities relationship. As monks are subject to a strict monastic code, they cannot make a living, and therefore rely on alms and food from nearby communities. A monastery cannot live in a totally secluded manner. As for those whose livelihood is provided by begging, monks cannot be choosy about food. Buddha never required vegetarianism. He even once rejected a proposal for such a strict practice, reasoning that extremism would cause difficulty for lay supporters.¹⁶ This symbiosis means that killing is necessary and the first precept cannot always be upheld. At best, Buddha allows his disciples to accept a meal if they are not aware that an animal was killed specifically for them or witnessed the act of killing.¹⁷

When Buddhism is adopted as a state ideology, a pragmatic approach to violence transforms into justification. Very notable is the militarized Mahayana.¹⁸ In Imperial Japan, soldiers were taught to sacrifice for the Emperor who was regarded as the fourth pillar of Buddhism.¹⁹ Selflessness was re-interpreted to devalue human life.²⁰ Lastly, meditation was adopted to help soldiers kill tirelessly.²¹ Overall, this radical version of Buddhism enhanced the brutality of the army.

In the Theravada tradition, in the 3rd century BCE, King Asoka of Mauryan India repented of his sin of leading a bloody campaign by becoming an ardent Buddhist. He was so devoted that he was named *Cakkavatti*, the ideal wheel-turning conqueror.²² However, Buddhism had not tried to justify killing until the Mahavamsa chronicle of Lanka. In the fifth century CE, the

¹³ Atthakatha Book 20: Dha.A.3 puppha-bālavagga.

¹⁴ *Ibid.*

¹⁵ Vinaya Pitaka Vol 2: Vinaya. Mahāvi (2).

¹⁶ Devathata's proposal in Vinaya Pitaka Vol 7: Vinaya. Culla (2)

¹⁷ Vinaya Pitaka Vol 5: Vinaya. Mahā (2).

¹⁸ Paul Demieville, 'Buddhism and War' in Michael Jerryson and Mark Juergesmeyer (eds) *Buddhist Warfare* (Oxford University Press 2010).

¹⁹ Brian Daizen Victoria, 'A Buddhological Critique of 'Soldier-Zen' in Wartime Japan' in Jerryson & Juergesmeyer, *Buddhist Warfare* 111.

²⁰ *Ibid.*, 117-121.

²¹ *Ibid.*, 121-123.

²² Tambiah, *World Conqueror and World Renouncer* 60; Reynolds, *The Two Wheels of Dhamma* 29.

Singhalese king, Dutthakamunu, similarly led a campaign killing thousands of Tamil Hindu invaders. This terrible act worried the great king. A group of enlightened arahat monks consoled the grieving king that his sin only amounted to the killing of one and a half men because most of his victims were Hindus whose goal was to eradicate Buddhism.²³ Since that moment, Theravada Buddhism has provided the state of exception to rulers in Sri Lanka as well as Southeast Asia. Violence is acceptable, or even encouraged, should the objective be righteous and a victim of a lower status. In other words, if that war is to protect Buddhism and the victims are non-Buddhists, then that atrocity is not to be condemned. This exception allowed for a century of wars in Southeast Asia where Burmese, Siamese, Laotian, and Khmer kings claimed to defend Buddhism from other monarchs with their wrong interpretations of Buddhism.²⁴ The rhetoric contrasts with the reality that both armies looted and demolished temples as well as captured monks as prisoners. This idea continues in modern Thailand. King Vajiravuth justified his decision to join the Allied forces in WWI, by claiming that it was the duty to join the right party in the dhammic war of right and wrong.²⁵ Later, Vajiravuth composed a poem on dhammic war to commemorate its ending.²⁶ In the Deep South, there are reports of ‘soldier monks’, professional soldiers getting ordained as monks but still on active duty as bodyguards for other monks.²⁷ This covert operation further blurs the line between monasticism and military.

From a critical perspective, Buddhism’s concept of the righteous war, or just war, has never been adequately developed into a sound restraint on the monarch’s exercise of power. There is no rule of recognition, nor are there rules of war.²⁸ There is no *jus in bello* nor *jus ad bellum* that can contain violence against the ruler’s arbitrariness. Buddhism defers to the king’s judgment as to whether violence is legitimate. It is therefore vulnerable to abuse by the establishment.

²³ Michael Jerryson, ‘The Buddhist State of Exception’ in Hiroko Kawanami (ed) *Buddhism and the Political Process* (Palgrave Macmillan 2016) 151; Mookhom Wongdesa, ‘เปิดทองหน้าพระ’ [Removing Gold Flake from the Face of the Buddha Statue] (2015) Read Magazine 68, 72-73.

²⁴ See Trevor Ling, *Buddhism, Imperialism, and War* (George Allen & Unwin 1979).

²⁵ Royal Declaration of War Against Germany and Autro-Hungary, Royal Gazette (vol. 32, p 333) 22 July 1917. Vajiravuth, 100 ปีสงครามโลกครั้งที่ 1 พระราชนิพนธ์อันเนื่องด้วยงานพระราชสงคราม ณ ทวีปยุโรป เล่ม 6 [Centennial Anniversary of WWI: His Majesty’s Writing on Warfare in Europe Vol. 6] (Ram VI Memorial Foundation, 2017) 37.

²⁶ See the prologue of Vajiravuth, *ธรรมาธรรมะสงคราม [Dhammic War]* (Reprint for Centennial Celebration of King Rama VI, 1981).

²⁷ See Jerryson, *Buddhist Fury*.

²⁸ See, for example, Hugh Beach, ‘Interventions and Just Wars: the Case of Kosovo’ (2000) 13 Studies in Christian Ethics 15; Laksiri Jayasuriya, ‘Just War Tradition and Buddhism’ (2009) 46 International Studies 423.

When a conflict arises and violence must be committed, the Sangha must co-operate with the state. Entering WWI, the Sangha Raja Wachirayana gave speeches justifying the king's decision and encouraging soldiers to serve in the righteous war.²⁹ He also punished an abbot, Phra Thep Moli, for preaching an anti-war sermon and condemning the soldier profession.³⁰ As late as the Thai-Lao conflict at Baan Rom Klao in 1988, Phra Panyananda Bhikhu openly supported Thai soldiers in protecting Thai sovereignty. In this sense, Kittivuttho's incitement of the right-winged militias who were clearly connected to the army might not be an anomaly.³¹ Thai Buddhism uncritically accepts the use of violence for a just cause.

Buddhism also contributes to the recent political conflict which has been framed by the conservative royalist minority as the battle between the good and the demons. The narrative dehumanizes the pro-democratic majority to the point that violence of all forms is justified.³² The goal is righteous and the opponents no longer deserve mercy. In 2010, soldiers shot dead six unarmed anti-government protesters who took refuge in Wat Prathum Wanaram Temple.³³ Despite this grave act, the Sangha raised no objections. Later during the 2014 anti-Yingluck protest, a violent militant monk, Buddha Isara, led a mob that robbed and assaulted bystanders. The goal was to create the sense of anarchy that would eventually delegitimize Yingluck Shinawatra and justify the coup.³⁴

In addition to protecting Buddhism against outsiders, violence is invoked to protect Buddhism from the enemy within. A purge is common when a king feels that Buddhism is tainted. Monks are summarily investigated, often tested on their knowledge in dhamma, before being disrobed should they fail to satisfy the king. A precedent of purification was set by King Asoka, with other kings following.³⁵ The tradition still lasts in today's Thailand where deviant sects and misbehaving monks face persecution.³⁶

²⁹ Witayakara Sowattara, ““ธรรมวิจานุสรณ์” พรรณนะวิจารณ์การเมืองระดับโลก’ [Dhamma Vijjayanusorn, Criticising the Global Politics] The Isaan Record (20 August 2017) at <<https://isaanrecord.com/2017/08/20/dharmavicayanusasana-antiwar-monk-review/>> accessed 1 April 2019.

³⁰ Phra Phaisan, *Thai Buddhism in the Future* 42-43.

³¹ Mookhom, *Removing Gold Flake* 76.

³² Prajak, *Dehumanization, Moral Space and Violence*; Mookhom Wongdesa, ‘ธรรมบั้งหน้า ธรรมบังตา’ [Blinded by Dhamma] *Prachatai* (23 June 2015) at <<https://prachatai.com/journal/2015/06/59932>> accessed 19 September 2019.

³³ ‘Six Dead in Wat Prathum Wanaram Shot by Military: Criminal Court’ *Prachatai* (6 August 2013) at <<https://prachatai.com/english/node/3663>> accessed 1 April 2019.

³⁴ Dubus, *Buddhism and Politics* 62-72.

³⁵ Tambiah, *World Conqueror and World Renouncer* 164-178.

³⁶ See Khemthong, *Purging the Thai Sangha*.

Still, Buddhism offers a refuge from violence. In Ayutthaya, many princes who wished not to get involved in the power struggle underwent ordination to show their contenders that they no longer were threats. However, the gesture is sometimes less than genuine. In one famous case in 1548 CE, Prince Thianracha took refuge in a monastery while planning a coup. Once the coup succeeded, he disrobed and ascended the throne. In the Bangkok era, Prince Mongkut, once his throne was taken by his half-brother, spent two decades in a saffron robe. More recently, in 2006, Borwornsak Uwanno, the Secretariat to the cabinet of Thaksin Shinwatra, used ordination as an excuse to resign from the scandalous Thaksin cabinet, which marked the decline of this authoritarian regime.³⁷ Suthep Thaugsuban, who led the 2013-2014 demonstration, angered the army when he revealed that the demonstration had been premeditated in order to condition the 2014 coup. He immediately underwent ordination.³⁸ Another case is that of Sudarat Keyuraphan, the political leader of the pro-democratic camp. Being a woman, she could not be ordained, and so she enrolled in the doctoral course on Buddhist studies.³⁹

As the chapter discusses further, this use of Buddhism to justify violence occurs repeatedly. The principle of non-violence can be circumvented if required. Buddhism has the potential to be a religion of peace, but it can also tolerate violence. Philosophically, Buddhism exhibits exceptional tolerance to all lives, but it allows political rulers to invoke the religion to deploy violence for self-preservation.⁴⁰ Buddhism has not developed an adequate theory on the just invocation of violence and the proper restraint.

B. Images of Kingship

Buddhism recognizes two forms of governance. A monastery is governed in a republican manner, where matters are deliberated before the gathering of monks. The model resembles the tribal council with which Buddha, born the prince of the Sakya clan, must have been

³⁷ ‘บวรศักดิ์ลาบวช’ [Borwornsak Resigns for Monkhoo] *Prachatai* (7 June 2006) at <<https://prachatai.com/journal/2006/06/8622>> accessed 1 April 2019.

³⁸ Borchert, *Imperfect Refuge*.

³⁹ ‘Sudarat Keyuraphan: Riding on anti-military wave to political rebirth’ *Thai PBS* (13 May 2019) at <<https://www.thaipbsworld.com/sudarat-keyuraphan-riding-on-anti-military-wave-to-political-rebirth/>> accessed 1 June 2019.

⁴⁰ See Schonthal, *Toleration of Theravada*.

familiar.⁴¹ However, Buddha also mentions monarchy, which is a prevalent form of the regime of the Indian Subcontinent and Southeast Asia up to the early 20th century CE. Buddhist kingship was first formulated in Tipitaka and later supplemented by non-canonical commentaries, local literature, and tradition, all of which help create the idea of the *dhammaraja*. The dhammaraja is central to state-building in mainland Southeast Asia. It lays the foundations of the regime, legitimizing how one becomes a ruler and setting limits upon the exercise of power. From there, it determines its political and legal arrangement as well as governing interactions with Buddhist and non-Buddhist communities. It dictates personal relationships too. The idea is deeply rooted in the consciousness of Theravada Buddhists. When the absolute monarchy of Southeast Asia ended, the dhammaraja did not subside into antiquity. The concept was re-interpreted as an ideal political structure and adopted by constitutional monarchs and non-monarchical rulers, civilians and military men, democratic as well as authoritarian. As a result, it has been discussed extensively in literature on Buddhism and politics, and it should get as much attention in Buddhism and law studies.

Buddhist kingship concerns the origin and *raison d'être* of the monarch. These views justify and dictate the different roles of the king in the polity, but all share one common feature of the Buddhist worldview, that the world is interconnected: the body of the king, his virtues, the quality of the king's ruling, the social order, and the natural order. This holistic view means there is no private-public separation. A king's action, even a personal one, will always have implication for the larger public, religion, and even to the surrounding nature. Even the spiritual realm is only semi-detached from the temporal realm. Although the monastery is self-regulated, Buddhism's survival as a whole heavily depends on the royal patron. Besides, as the king is regarded as having been descended from the bloodline of Buddha, the separation between the two realms becomes blurred. The king is both the temporal and spiritual leader of his kingdom. The Dhammaraja is the sacred king.

Basically, the canonical source portrays the king as a temporal ruler who earns the throne as a result of his exemplary observance of dhamma. A temporal ruler must undertake the caring of the spiritual world, yet the two realms remain apart. Later, the Theravada tradition in Southeast Asia develops the second view which elevates the king to a sacred figure, almost like Buddha himself. This regional belief regards the king as the heir of Buddha, therefore, merging the two

⁴¹ Kumkum Roy, 'Society at the Time of the Buddha' in French & Nathan, *Buddhism and Law* 32.

realms of the temporal and spiritual within one physical, yet sacred, body. There is no conflict between the two strains as this dichotomy is not clear-cut. Commentaries and local traditions play key roles in supplementing the canonical sources, hence blending them together. Despite the ideological difference, the two ideas co-exist, forming the image of the Dhammaraja who possesses many images within one body.

Crucial to understanding the following stories is Buddhist cosmology; the knowledge about the mythical cycle and reincarnation. Buddhism believes that the world is in a continuous loop of rebirth and destruction continuum. An aeon begins with the world in the perfect state before gradually devolving into chaos. Ultimately, it is destroyed, into emptiness, followed by a long pause before the process repeats again.⁴² Reincarnation logic applies to life itself, which reincarnates in several different forms. According to the principle of cause-and-effect, bad deeds lead to low forms of life while good deeds result in higher ones. Life repeats the process indefinitely until one learns the truth and reaches salvation. Ignorance prevents life from leaving the cycle.

(a) The Great Elect

Buddha tells the origin of kingship in the *Agganyasutta* chapter when he repudiates the Brahmanical belief of caste.⁴³ Brahmins were attacking newly ordained monks for abandoning their high caste for the casteless company of Buddha. Buddha then explains to his disciples how the world, and the caste system, are created. After the long pause from the previous one, the present cosmos was born. From emptiness, with no time nor space and all sentient beings having no forms, a milk-like substance emerges. When sentient beings taste the sweet substance, they desire for more. As the desire grows, they lose their aura and solid bodies are formed. Emptiness is gradually filled with the solar system and time begins to move. Eventually, the ideal conditions, i.e. abundance of resources and the perfect body form, keep disappearing every time people increase their desires until the society is born.⁴⁴ From the perfect body, people acquire different looks. At first, rice is aplenty so everyone harvests it only when hungry. Yet laziness means some members start stocking grain for later meals. Rice

⁴² Chai-anan & Sombat, *Thai Political and Social Ideas* 7-8.

⁴³ Sutta Pitaka Vol 3 : Sutta. Tī. Pā (Aggaññasuttam); Tambiah, *World Conqueror and World Renouncer* 11-13; Veera Somboon, รัฐธรรมในอดีต [*Ancient Dhammic States*] (Open Books 2008) 26-35.

⁴⁴ *Ibid.*

stops regenerating so humans learn to plough the field. Others follow and soon they allocate the once-collective land to private individuals. This is when the concept of private ownership is born. Finally, greed convinces people to steal from their neighbour.⁴⁵ Initially, members of that society issue a warning but ultimately, they persecute those thieves. Violence ensues when everyone takes justice into one's own hands. At this stage, members convene and agree to elect one among them, the fairest and most charismatic, to be the king.⁴⁶ His duty is to settle disputes and uphold justice. In exchange for his service, people pay him part of their harvest as tax. His title is known as *Mahasammata*, the Great Elect, because he enjoys the consensus. Other terminologies for the king are: *Kasatriya*, the Lord of Fields, and *Raja*, the one who pleases the public by dhamma.⁴⁷ The terms are still in use today.

Agganyasutta explains how the world, and the social structure, come into being. It follows a certain direction from the void to the tangible world, from no-self to self, and, interestingly, not from chaos to cosmos but *vice versa*. It is a downward path. Desire, laziness, and greed lead to inequality, ownership, and violence.⁴⁸ Kingship is a response to such a chaotic struggle. When the first king is elected, violence ceases and order is restored.⁴⁹ The Great Elect rules by adjudicating disputes and punishes those proprietors. Thus, Buddhism sees the state not as a necessary evil but a positive development. Under the king, there begins the division of labour and castes are born. According to Buddha, the caste is therefore not the deity's designation, as held by Brahmins, but from political and social functions.

Agganyasutta produces an image of an absolute and benevolent king. It upends the Brahmanical belief in the caste system. In Hinduism, the god Brahman creates brahmins, warriors, merchants, and labourers from his mouth, chest, lap, and feet respectively.⁵⁰ In Buddhism, the king is placed at the zenith of the society, under which other castes develop. This is a direct challenge to the brahman's high status under Hinduism.⁵¹ In effect, Buddhism enables the king to become an absolute monarch because it frees the king from the control of

⁴⁵ *Ibid.*

⁴⁶ See Somboon, *Buddhism, Political Authority, and Legitimacy* 104.

⁴⁷ Tambiah, *World Conqueror and World Renouncer* 13.

⁴⁸ Chai-anan & Sombat, *Thai Political and Social Ideas* 28-30.

⁴⁹ Tambiah, *World Conqueror and World Renouncer* 14.

⁵⁰ Rupert Gethin, 'Keeping the Buddha's Rule: The View from the Sutra Pitaka' in French & Nathan, *Buddhism and Law* 68.

⁵¹ Tambiah, *World Conqueror and World Renouncer* 13-14 & 22-25.

brahmins, the keepers of Vedic knowledge, whom, according to Hinduism, the kings and warriors must serve. In Buddhism, the role is reversed.

When Buddha asserts that the warrior caste, to which the king belongs, is not designated by god, he is saying that kingship is not hereditary. Kingship must be earned. The king is elected and he remains on the throne as long as he is willing to fulfil his duties of settling disputes and keeping peace among the crowd. The sense of duty sets a limit on his absolute power, that it be exercised for the good of the public. The king's sovereignty is the result of a consensus. However, this consensus is problematic.

The Great Elect story is sometimes likened to John Locke's Social Contract but this comparison is questionable.⁵² Despite the name of the Great Elect, the sutta states clearly that people choose the fairest and the most charismatic among them, a description that casts doubt on whether this is an election in the liberal sense. It is not clear how a person possesses fair appearance and charisma, but one subsequent interpretation in the Theravada tradition is that both qualities reflect the meritorious quality of that person.⁵³ The result of the Theravada interpretation is that kingship is pre-destined to the most dhammic candidate so the act of electing appears *pro forma*. Besides, although the king is said to rule by consensus, it is doubtful if people are really free to make a choice. What would happen to the king should he fail to deliver? The sutta is silent about the question of recall. The Great Elect is thus more similar to Thomas Hobbes' Leviathan. What Buddha describes resembles the war of all against all driven by greed, fear, and pride so people make a covenant that establishes absolute monarchical rule.⁵⁴ At best, as in the Hobbesian theory of kingship, the king owes his responsibility to the higher law of dhamma, not the people, but how exactly dhammic consequences fall upon him is difficult to tell.

Another implication from Agganyasutta is how the king's personal behaviour becomes tied to the cosmos. The righteous king will maintain the right order of the human society and the natural world.⁵⁵ When the king acts correctly, his kingdom enjoys a good harvest, fair weather,

⁵² For example, Veera, *Ancient Dhammic States* 35. See Reynolds, *The Two Wheels of Dhamma* 19.

⁵³ Reynolds & Reynolds, *The Three Worlds of King Ruang* 31; Cholthira, *Trai Phum Phra Ruang* 116; Somboon, *Buddhism, Political Authority, and Legitimacy* 105.

⁵⁴ Thomas Hobbes, *Leviathan or the Matter, Forme, & Power of a Common-Wealth Ecclesiasticall and Civill*, (1651 Reprint for the McMaster University Archive of the History of Economic Thought) in XVII: Of the Causes, Generation, and Definition of a Commonwealth 105-107.

⁵⁵ Somboon, *Buddhism, Political Authority, and Legitimacy* 106.

health, and peace. If he misbehaves, disasters befall his kingdom, for example, drought, storm, flood, theft, etc. Ancient chronicles from Northern Thailand often tell similar stories of a corrupt king whose behaviour brought a great flood upon his kingdom.⁵⁶

No Buddhist kingdom has ever adopted the Great Elect model in its entirety. Traditionally, succession is by hereditary right. In reality, tradition rarely works as planned. Ayutthaya witnessed civil wars, murders, and political tensions which made succession violent and unpredictable. No consensus was sought. It was not until the House of Chakri founded Bangkok that a sort of consensus was obtained. The Bangkok era enjoyed a more stable politics. The king was selected by the convention of aristocrats and senior monks, who were regarded as the representatives of the ruling classes.⁵⁷ Getting approval is thus crucial to the survival of the throne because the king secures his ascension only after negotiation with powerful courtiers and religious representatives, with whom he has to work in the future.⁵⁸ Still, vassals take no part in the process. In practice, a forum of powerful lords means the rule can be broken should a better candidate be agreed upon. The most notable example was King Rama III who was born from a consort of lower ranking but who was chosen because of his powerful positions in the government. The rightful heir, Prince Mongkut, took refuge in a monastery for more than two decades until Rama III's death to reclaim the throne.⁵⁹

King Rama V intended to solve this chronic issue of succession, issuing the Palace Rule of Succession B.E. 2467 (1924) designating the throne to the Crown Prince, appointed upon the discretion of the king. The rule signifies the peak of Siam's absolute monarchy that the king, King Rama V, centralized power and became the true absolute sovereign without relying on the elites' consensus. It is also a manifestation of the arrival of the western concept of monarchy. The period was short-lived because Thailand became a constitutional monarchy in 1932 under the reign of King Rama VII. The Palace Law is still in effect but, according to constitutions, an heir must be endorsed, albeit only symbolically, by the Parliament.⁶⁰ Thus, Thai kingship often sought some forms of consensus, either by serious negotiation among

⁵⁶ Chai-anan & Sombat, *Thai Political and Social Ideas* 46-51.

⁵⁷ Prince Dhani Nivat, 'The Old Siamese Concept of the Monarchy' (1946) 36 *Journal of Siam Society* 91, 100-101; Suntaree A-sawai, 'ความคิดทางการเมืองแนวพุทธในสถาบันพระมหากษัตริย์ไทย' [Buddhist Political Ideologies in Thai Monarchy] (2003) 24 *Political Science Journal* 246, 255-259.

⁵⁸ Suntaree, *Buddhist Political Ideologies* 259. See King Mongkut in Wyatt, *Thailand* 164-165.

⁵⁹ Wyatt, *Thailand* 150-152.

⁶⁰ Thai Constitution 2017, art 20-21.

Siamese patricians or ceremonial parliamentary endorsement. The latter is arguably the closest resemblance of the Great Elect but still only vaguely democratic.

(b) The World Conqueror

Cakkavattin, the wheel-turning monarch who conquers the world, is at the heart of the Buddhist concept of kingship. Tipitaka mentions Cakkavattin several times but mainly in the *Cakkavattinasutta* chapter.⁶¹ Cakkavattinasutta predicts the rise and fall of humanity as well as the arrival of the next Buddha, Mettrai. The sutta does not concern the origin of kingship, but with how to achieve the status of the excellent king. There are many kings but only the most exalted one may rule the world. It may be considered the sequel to Agganyasutta; after the king is chosen to rule, he must learn how to rule rightly.

Cakkavattinasutta begins in the ideal era when the lifespan of the human race is over 80,000 years old. The great king rules his great kingdom, the wealth of which is represented by the seven gems of the wheel, the elephant, the horse, the jewel, the wife, the minister, and the banker. The most important is the wheel or Cakka, which is the symbol of the right rule. Cakka signifies the wheel of a war chariot that helps advance the Aryan conquest of northern India. He rules not by force but by dhamma. He rules until the wheel moves from its usual place so he realizes that his time has come. The king abdicates to live the life of a sage. His eldest son, the successor, discovers with dismay that his father's wheel disappears shortly afterwards. The monarch-sage advises the young king that he must practise the eight precepts of dhamma in order to earn the wheel once more, which he obeys.⁶² With the newly acquired wheel moving around every corner of the world, the king together with his great army follow. Wherever the wheel reaches, local kings surrender. The king, now the Cakkavattin, or the Wheel-turning monarch, spares them, allowing them to keep their kingdoms as his tributary states and teaching them to observe the five precepts of dhamma.⁶³ The story repeats itself until one king decides not to seek his father's advice and fails to provide his subjects with generous handouts.⁶⁴ Poverty grows so people start to steal, then, to murder, and lie. They lose the grace to tell right from wrong. As society moves closer to anarchy, their lifespan gradually shortens to 10 years

⁶¹ Sutta Pitaka Vol 3 : Sutta. Tī. Pā. Cakkavattisuttaṃ.

⁶² Veera, *Ancient Dhammic States* 42.

⁶³ *Ibid*, 132.

⁶⁴ *Ibid*, 46.

of age and their diet consists of grass with the onset of a large purge. Survivors, realizing the benefit of dhamma, start practising it again and rebuild the society until a prosperous city once again stands and the great king earns the magical wheel. This time, the next buddha, Mettrai, is born and the king finally leaves the throne to be ordained as a monk.⁶⁵ Buddha emphasizes, at the end of the sutta, the importance of living according to dhamma.

Cakkavattinasutta follows a typical Buddhist deterministic narrative of the world degenerating and resurrecting over and over. At the heart of the story is the king, whose behaviour is closely associated with the well-being of his subjects. The king's rightful reign brings prosperity and order. The king's mistakes lead to the decline of human morality, age, physique, and conscience.

Contrary to Agganyasutta, Cakkavattinasutta accepts hereditary succession, as each king abdicates for his eldest son. Consensus is not discussed. However, Cakkavattin, the status of the wheel-turning monarch, is still not hereditary. Each king must earn the mythical wheel, the symbol of conquest, by practicing dhamma and ruling accordingly before he can attain such status.

Very notable is the king's avoidance of the use of force. Violence breeds violence as anarchy shows. Although he possesses a great army of soldiers, chariots, elephants and horses, that accompany him on his journey to conquer the world, he does not deploy it. Lesser monarchs surrender peacefully because of the Cakkavattin's mythical power derived from right behaviour. He reciprocates by sparing them and teaching them dhamma. The conquest of the world is thus a political as well as a religious mission. Thus, Cakkavattin's mission is not only to restore order, but to restore it without violence. This aversion towards violence will later be compromised when the idea is implemented.

Cakkavattinasutta is not the only place where Cakkavatti is discussed. Often, it is in Buddhology where Buddha likened himself to Cakkavatti. Buddha is born with the 32 special body marks that only *Mahapurisa*, the Great Man, possesses.⁶⁶ The Great Man usually refers to Cakkavatti. The wise men, upon his father's request, foretell that the prince is given the

⁶⁵ *Ibid*, 52.

⁶⁶ Sutta Pitaka Vol 2 : Sutta. Tī. Ma. Mahāpadānasuttam; Reynolds, *The Two Wheels of Dhamma* 20.

choice of either becoming Cakkavatti or Satsada, the founder of the great religion which he chooses.⁶⁷ He even recalls having been born as Cakkavatti several times. Finally, in *Mahāparinibbānasutta*, Buddha advises his disciples to prepare his funeral like that of the king.⁶⁸ All this subsequently evolves into the idea that kingship and Buddhahood are two mirror images. Known as the two wheels theory, the world consists of the temporal and spiritual realms; Cakkavatti rules the first while Buddha rules the latter.⁶⁹ The two realms are connected as Cakkavatti can only move his wheel to conquer the world if he takes good care of the spiritual realm. Because his conquest is by dhamma, the Cakkavatti turns both wheels to every corner of the world. This theory will later evolve into the cult of the Bodhisatta as discussed below.⁷⁰

The story of the wheel-turning monarch is finally actualized by the historical figure, King Asoka of Mauryan India, who lived 200 years after Buddha's time.⁷¹ Asoka was able to conquer the subcontinent after several years of bloody campaigns. Saddened by the bloodbath, the traumatized king was introduced to Buddhism and converted to become an avowed follower. Asoka is the first monarch who demonstrated to the fullest extent what practising dhamma really means. Among others, he treated the sangha with great care, providing it with huge donations. He hosted the recension of Tipitaka and actively purged monks whose behaviour and knowledge were questionable.⁷² He commanded his subjects to live according to Buddhist dhamma. Most importantly, he sent out missionary deployments of monks to disseminate Buddhism in all directions.⁷³ Under his patronage, Buddhism grew from a modest movement into the de facto state religion, and eventually the world religion.⁷⁴ In addition to his religious missions, Asoka's other achievements also matched the definition of Cakkavattin. He was a successful overlord of ancient India. The transition from violence to benevolence marks a similarity between him and Buddha, who transitioned from ignorance, indulging in worldly pleasure, to enlightenment.⁷⁵ Despite violence and authoritarianism in his policies, these conditions make him a paternalistic benevolent king, the ideal Cakkavattin as he later came to

⁶⁷ Gethin, *The Foundations of Buddhism* 20.

⁶⁸ Sutta Pitaka Vol 2 : Sutta. Tī. Ma. Mahāparinibbānasuttam.

⁶⁹ See Reynolds, *The Two Wheels of Dhamma* 22-23; Tambiah, *World Conqueror and World Renouncer* 43-44.

⁷⁰ Tambiah, *World Conqueror and World Renouncer* 38-39.

⁷¹ See *ibid*, ch 5; Reynolds, *The Two Wheels of Dhamma* 23-30; and Swearer, *The Buddhist World of Southeast Asia* 72-75.

⁷² Tambiah, *World Conqueror and World Renouncer* 164-178.

⁷³ *Ibid*, 54.

⁷⁴ Swearer, *The Buddhist World of Southeast Asia* 73-74.

⁷⁵ Reynolds, *The Two Wheels of Dhamma* 28-29.

be called. Asoka's legacy encouraged countless kings in Sri Lanka and Southeast Asia to follow his example.

The actual consequence of the concept of the wheel-turning monarch is not peace. Even King Asoka carried out a purge on the sangha. Despite preaching dhamma to subjects, aspiring kings, for centuries, waged wars against one another. Those who lost became tributary kingdoms. Cakkavattin needs lesser monarchs to confirm his superiority.⁷⁶ The idea of defeating an enemy by dhamma is overlooked. It is generally accepted that Cakkavatti might be too idealistic. The ideal thus transforms into Dhammaraja.⁷⁷ A king might not be able to summon the great seven assets but he ascends to the throne because of good merit. He acquires other precious regalia and then embarks on the mission to subdue other kings and establish himself above them all.

Siam developed its own understanding of Cakkavattin. Trai Phum Phra Ruang, or the Three Worlds of King Ruang, as the name suggests, describes the three worlds, each containing many sub-worlds, totaling 36.⁷⁸ These worlds rank from the lowest to highest class. In the uppermost heaven, beings have bodies so fine or no physical bodies at all. Beasts dwell in the lower world. Various inhabitants are placed according to their kamma, their deeds, good and bad. Bad deeds land a creature in one of many hells, depending on the type and severity, to receive a specific punishment for that offence. Good deeds send a being to one of the heavens. Thus, the main theme is kamma and its consequences; that all beings are conditioned by their past deeds: rich or poor, ugly or fair, smart or stupid.⁷⁹ Most importantly, the one with much good kamma will be born in a noble family, surrounded by servants, and with the potential power to rule the universe.⁸⁰ Obviously, Trai Phum is referring to the ascension of Cakkavattin. It justifies the hereditary rule that being born in the royal family is, in itself, evidence of good deeds, of the observance of dhamma, of worshipping monks, in the past life.

(c) The Soteriological King

Beginning around the fifth century CE, a new tradition of kingship emerged in Sri Lanka. The chronicles of Singhalese kings, namely *Mahavamsa*, *Chulavamsa*, and *Dipvamsa*, tell the

⁷⁶ Tambiah, *World Conqueror and World Renouncer* 46.

⁷⁷ Reynolds, *The Two Wheels of Dhamma* 21; Suntaree, *Buddhist Political Ideologies* 249.

⁷⁸ Swearer, *The Buddhist World of Southeast Asia* 101.

⁷⁹ Jackson, *Buddhism, Legitimation, and Conflict* 41-42.

⁸⁰ Suntaree, *Buddhist Political Ideologies* 250-251.

history of the island and the Singhalese dynasty.⁸¹ These chronicles portray the king in two new lights: first, that the king is a descendant of the Buddha's lineage, and second, that the king possesses a soteriological power.⁸² The king is depicted as an ideal person, the epitome of a perfect body and virtue. His meritorious rule leads to the salvation of the people. In summary, these Lankan chronicles transform the concept of Buddhist kingship from Cakkavatti to Bodhisatta-king.

The idea of Bodhisatta-king does not replace Mahasammata or Cakkavatti. Rather, it supplements them. A *Bodhisatta* is a person who strives for the greater goal of Buddhahood than simply becoming enlightened as an Arahant. However, only if a person accumulates the highest level of barami, or perfection, can he be born a perfect man, Buddha, the most exalted, flawless, human being.⁸³ Those who are on this mission are Bodhisattas. The concept is more prevalent in the Mahayana tradition which believes that the world has countless numbers of Buddhas, before and after Gotama Buddha, whom we know. While Theravada Buddhism sees no different outcomes between Arahant and Buddha, both are to leave the cycle of birth and suffering, Mahayana considers Buddhahood more admirable because he could save more people.⁸⁴ Arahant's goal to escape alone is too individualistic. The name Mahayana means the Great Vehicle, a symbol of a compassionate Bodhisatta who forgoes arahantship in order to be able to carry more people to nirvana.⁸⁵

While Mahayana tells stories of countless Bodhisattas striving to be born as Mettrai Buddha in the very far future, Theravada focuses only on the saga of Gotama Buddha.⁸⁶ According to the Tipitaka, people are now living in between-time, after Gotama but before Mettrai. Buddhism will gradually degenerate so much so that, after 5,000 years, it vanishes.⁸⁷ Buddhism will only be revived when Mettrai is born and the cosmos restored again. The narrative is typical of the Buddhist degeneration and regeneration cycle. The saga of Gotama Buddha is not about the actual biography of a man who had historically lived 2,500 years ago but about his past incarnations, known as Jataka.

⁸¹ Jory, *Thailand's Theory of Monarchy* 97.

⁸² *Ibid*, 101-102.

⁸³ *Ibid*, 17-19.

⁸⁴ Gethin, *The Foundations of Buddhism* 228-231.

⁸⁵ *Ibid*, 224.

⁸⁶ Jory, *Thailand's Theory of Monarchy* 2.

⁸⁷ Chai-anan & Sombat, *Thai Political and Social Ideas* 8.

Jataka had inspired the Theravada's cult of the Bodhisatta-king. The idea originates from the ancient chronicles of Mahavamsa, meaning the Great Lineage, from Sri Lanka. Mahavamsa, tells of a Brahmin named Sumedha, who vowed before Dipankara Buddha to become a Buddha. Through his mission, he was born in many life forms and faced numerous events while perfecting his barami. In this eon, he was first born the first king, the Great Elect, in Agganyasutta. After innumerable reincarnations, finally, the perfect Sumedha was born Gothama Buddha.⁸⁸ The story does not end here. The line of succession continues until the Singhalese king. Mahavamsa has therefore merged all mythical and historical kings ever known into a single continuous lineage.⁸⁹ It sacralised and justified the dynasty of the Lankan king by connecting it to religion. The Mahavamsa chronicle draws much inspiration from Jataka, the tales of Buddha's life story, in which Buddha describes some of his past incarnations. There are many but only a few are well-known. Most importantly, the story does not end here. The Singhalese king is on the path to be the Mettrai Buddha.

The Bodhisatta-kingship adds another layer of mythical power to the sacred kingship. It glosses the Singhalese kings with even more glory for their pure bloodline from Buddha. The Bodhisatta-king moves the monarch and Buddha closer, confusing the dichotomy Buddha had earlier been given between the choice of Cakkavatti and Satsada. The two roles are rested within a single person. These kings are the soteriological Cakkavatti.

The cult of Bodhisatta-king is widely welcomed in ancient mainland Southeast Asia. Local kingdoms produce their own chronicles that begin with Buddha's life story which eventually leads to their dynasty.⁹⁰ Trai Phum confirms that, while the future Buddha Mettrai has not arrived, there be born Cakkavatti as his substitute.⁹¹ This leads to greater emphasis on the king's personal virtues and the effect of his virtues on the subjects. As a substitute for Buddha, the king must personally observe dhamma and teach it to his people. The ultimate goal of the state is therefore not peace and order, but salvation.

Not only does the cult provide religious aura to the leaders, but it also connects the hinterland of Southeast Asia to the sacred Indian motherland. The Siamese kingdom then becomes part

⁸⁸ Jory, *Thailand's Theory of Monarchy* 97-98.

⁸⁹ *Ibid*, 100.

⁹⁰ *Ibid*, 101.

⁹¹ Chai-anan & Sombat, *Thai Political and Social Ideas* 100.

of a wider world. The cult results in the treatment of the king almost as if Buddha.⁹² The honorific title contains a clause *Nor-Phra-Phuttanggoon*, literally the stem of the Buddha, or *Maha-Sommati-Wong*, the lineage of the Great Elect.⁹³ King Rama V is called *Phra-Phutta-Chao-Luang*, the royal Buddha.

Most importantly, the Bodhisatta cult gave rise to another influential genre of Thai political literature, *Mahachat* or the Great Births, which recounts the last incarnation of Bodhisatta Vessantara before he is born the Lord Buddha. As Nidhi argues, prior to the Buddhist reform in early twentieth century, Thais focused more on Buddha's Jataka than on the actual history of Buddha.⁹⁴ Recitation of *Vessantara Jataka* used to be one of the most popular religious ceremonies in Siam.⁹⁵ It teaches the power of *dana*, or giving, contributing to perfection. Even King Borommatrailokanat (r. 1448-1488) authored a piece, *Mahachat Kam Loung*, the Royal Poem of the Great Births, after he successfully annexed the northern kingdom of Sukhothai. He felt the need to strengthen his legitimacy before newly acquiring the territory so he meant his work to be on par with Sukhothai's Trai Phum.⁹⁶ When the House of Chakri was established, King Rama I lacked any continuity from the fallen kingdom of Ayutthaya so he employed the Bodhisatta-kingship idea to connect his dynasty to that of Buddha.⁹⁷

The benefit of the Great Lineage theory is that it overcomes the common problem of the broken succession. Leaving Sri Lanka, no Southeast Asian king can claim a hereditary connection to Buddha. They, instead, rely on the inspiration to attain Buddhahood.⁹⁸ By this, a Bodhisatta may be born even outside the royal family but he can still claim legitimacy to the throne. This is a downside too. When a hereditary claim is not the only criterion, the throne is constantly susceptible to outside challengers. An unpopular king faces a contest. A popular rebel leader can claim that he is a Bodhisatta too. This has emboldened a number of Buddhist millenarian rebels up to the early twentieth century CE.⁹⁹ There is no hard and fast rule for recognizing a Bodhisatta. Indeed, justification is always *a posteriori*. A successful rebel is a perfect man. A failed rebel is a rebel.

⁹² See Skilling, *King, Sangha, and Brahmins*.

⁹³ Suntaree, *Buddhist Political Ideologies* 252-253.

⁹⁴ Nidhi, *Pen and Sail* 331-338.

⁹⁵ Jory, *Thailand's Theory of Monarchy* 70-73.

⁹⁶ Chai-anan & Sombat, *Thai Political and Social Ideas* 112-113.

⁹⁷ Jory, *Thailand's Theory of Monarchy* 78-85.

⁹⁸ *Ibid*, 102-103.

⁹⁹ Peter A. Jackson, 'The Hupphaasawan Movement: Millenarian Buddhism among the Thai Political Elite' (1998) 3 SOJOURN 134; Ishii, *Sangha, State, and Society* 171-185.

C. The Modern Dhammaraja

Tai rulers embraced the three images of kingship which cohered well and enhanced their paternalistic style of leadership.¹⁰⁰ Later, when Sukhothai was annexed to Ayuttaya, Buddhist kingship, Dhammaraja, met the Brahmanical concept of *Devaraja*, the divine kingship, which Ayutthaya had adopted from the Khmer Empire.¹⁰¹ Siamese kings then evolved from a father-figure and idealized Buddha to the demi-god. Both strains of kingship, Buddhism and Brahmanism, co-existed but the latter later declined, especially from the early Bangkok era onwards. The Chakri kings emphasized being a benevolent ruler.¹⁰²

The Dhammaraja has vast implications on statecraft in mainland Southeast Asia. Over several hundred years, Buddhist kingship developed a unique political theory of *mandala*, or a sphere.¹⁰³ The king was the epicentre of the world. His mythical power radiated from his sacred body, so his kingdom was constructed accordingly. The palace, where the king lives, is the centre of everything, physically and psychologically.¹⁰⁴ Unlike the sovereignty, the king's power is not full, absolute, nor eternal. The further the distance is from his body, the less intense his control becomes. The capital and adjacent provinces are under his full control, while at the peripheries, tributary states are under lesser monarchs whom he defeats. These borderlands are where it is possible that two or more spheres overlap; that a tributary state gives its loyalty to all rulers.¹⁰⁵

A mandala is a very dynamic system because it is closely tied with the personal quality of a person. The ancient kingdom therefore expanded and receded depending upon how the attributes and condition of the king were regarded. If the king is perceived as accumulating enough perfection, or barami, his mandala is intact. If he ages, or is corrupt, the mandala shrinks

¹⁰⁰ Somboon, *Buddhism, Political Authority, and Legitimacy* 110-111.

¹⁰¹ See Swearer, *The Buddhist World of Southeast Asia* 86-87.

¹⁰² Akin Rabibadhana, พระมหากษัตริย์-ขุนนาง: นาย-ไพร่ ในโครงสร้างสังคมไทยยุคต้นกรุงรัตนโกสินทร์ [*The Organization of Thai Society in the Early Bangkok Period 1782-1873*] (Kob Fai Foundation, 2017) 52-58.

¹⁰³ See Tambiah, *World Conqueror and World Renouncer* 102; Sunait Chutintaranond, "Mandala" "Segmentary State" and Politics of Centralization in Medieval Ayudhaya' (1990) 87 *Journal of Siam Society* 88; Prapod, *Ascendancy of Theravada Buddhism* 18-19.

¹⁰⁴ Swearer, *The Buddhist World of Southeast Asia* 82-104.

¹⁰⁵ See examples of Siam's overlapping tributary states in Wyatt, 139-141.

and an uprising may follow.¹⁰⁶ A successful king was required to maintain his kingdom by observing dhamma for the king, known as *rajdhamma*. The most basic *rajdhamma* is the ten royal virtues, that is, *dasavidha-rajdhamma* or *totsapitrājadhammā*.¹⁰⁷ The king must observe: *dana* (charity), *sila* (morality), *pariccaga* (altruism), *ajjava* (honesty), *maddhava* (gentleness), *tapa* (self-controlling), *akkodha* (non-anger), *avihimsa* (non-violence), *khanti* (tolerance), and *avirodhana* (uprightness).¹⁰⁸ Additionally, there were other lists of dhamma for the king to practise and to preach to his subjects too e.g. to refrain from the abuse of taxation, the provision of justice, and the patronage of monks.¹⁰⁹ The king must continuously make merit as witnessed by the public, to constantly remind the people of the king's *barami*. Year-round, periodic religious ceremonies are scheduled, dictating the pace of life in the kingdom.¹¹⁰

Under the concept of Buddhist kingship, the king is assigned with various tasks to fulfil his role in a combination of the Great Elect, the Universal Monarch, and the Bodhisatta. He is a judge who upholds justice and order.¹¹¹ He is the law keeper.¹¹² He even wages wars against the neighbouring kings to assert his power over inferior peers. He conducts public religious ceremonies and acts as the exemplary Buddhist to guide the people toward the betterment of life.

Around the turn of the nineteenth century CE, the traditional theory of kingship in Siam encountered a new challenge from the West. Western liberalism defied the very foundations of Buddhist kingship by questioning the Buddhist tales of mythical kings which it viewed as barbaric and backward.¹¹³ Thus, Siamese elites began a modernization process in order to give the appearance of being rational and advanced. Existing institutions were adapted for their own survival with Siamese elites being forced to abandon the Buddhist king theory, replacing it with the concept of sovereignty.¹¹⁴ The king was no longer a mythical Bodhisatta of the Great

¹⁰⁶ Somboon, *Buddhism, Political Authority, and Legitimacy* 106; Chai-anan & Sombat, *Thai Political and Social Ideas* 83-86.

¹⁰⁷ Somboon, *Buddhism, Political Authority, and Legitimacy* 105; Borwornsak, *Ten Principles of a Righteous King*; Dhani, *The Old Siamese Concept of the Monarchy* 94-95; Merieau, *Buddhist Constitutionalism in Thailand* 7.

¹⁰⁸ Chai-anan & Sombat, *Thai Political and Social Ideas* 62-63.

¹⁰⁹ *Ibid*, 63-67.

¹¹⁰ See Chulalongkorn, *พระราชพิธีสิบสองเดือน* [Royal Ceremonies for Twelve Months] (Petch Krarat, 2010).

¹¹¹ Akin, *Organization of Thai Society* 59-60.

¹¹² Dhani, *Old Siamese Concept of the Monarchy* 98-100; Lingat *Evolution of the Concept of Law* 26. But see Chris Baker & Pasuk Phongpaichit, *The Palace Law of Ayutthaya and the Thammasat* (Cornell University Press 2016) 27-28.

¹¹³ Jory, *Thailand's Theory of Monarchy* 110-111.

¹¹⁴ *Ibid*, 115-121.

Lineage, nor the centre of the universe. Instead, he became the sovereign whose power was absolute over the defined territory of Siam, a small country in the Far East. The mandala was replaced by the nation-state which covered a fixed territory. Moreover, he could no longer claim universal wheel-turning status. Burma, Laos, Cambodia, and Malay Peninsula, within a very brief period, were all swallowed up by the British or French Empires. The fate of their monarchs reminded the Siamese elites of the necessity to westernize the institution, and so it was also during this period that Buddhism underwent reforms to rationalize the teaching and eradicate the strain of syncretism.¹¹⁵ The Jataka became labelled as old Indian fables.¹¹⁶ However, the monarchy was unable to keep up with the changes. Finally, in 1932, it was forced to end its absolute rule and adopt its new role as a constitutional monarchy.

Yet the 800-year old tradition would not simply vanish. Thailand had not severed ties with its past.¹¹⁷ The Dhammaraja was so entrenched in the hearts and minds of Thais regardless of the political changes, and the 1932 Revolution did not eradicate kingship. The constitution recognized Thailand as a kingdom, a form which was the basic structure and unamendable.¹¹⁸ With time, Buddhist kingship was able to revive its former glory under King Bhumibol.

In 1946, Prince Dhani Niwat gave a public lecture on Siamese kingship before the young king-to-be. Prince Dhani asserted Siam had been ruled by the Dhammarajas whose legitimacy derived from their observance of ancient laws and traditions, particularly those of Buddhism. He pictured a benevolent ruler fulfilling all three images of Buddhist kingship. This influential lecture arguably laid the foundation for the modern Dhammaraja.¹¹⁹

Part of the Dhammaraja's success was due to the short life of democratization. Within 15 years, conservatives were able to regain control of Thai politics, once lost to the liberals in 1932.¹²⁰ Since then, Thai politics has been plagued with military interference, both directly and indirectly. Failed democratization created a discourse which reduced elections to rituals which

¹¹⁵ See Jackson, *Buddhism, Legitimation, and Conflict* 43-47; Phibul, *Political Buddhism*.

¹¹⁶ Jory, *Thai and Western Buddhist Scholarship*.

¹¹⁷ Jackson, Re-interpreting the Traiphuum Phra Ruang 67-68. In general, see Piyabutr, *Constitution: History, Constituent Power, and Transition*.

¹¹⁸ The clause is recognized in the first article of every Thai constitution. For Thailand's unamendability, see Khemthong Tonsakulrungruang, 'Constitutional Amendment in Thailand: Amending in the Spectre of Parliamentary Dictatorship' (2019) 14 *Journal of Comparative Law* 173.

¹¹⁹ Dhani, *The Old Siamese Concept of the Monarchy*.

¹²⁰ Hewison, *Contest Over Elections* 52-54.

only local crime syndicates contested. Hence, violence and corruption were often expected.¹²¹ In contrast, the conservatives campaigned to promote King Bhumibol as the benevolent figure. Throughout his long reign, Bhumibol worked tirelessly to rebuild the stature of the monarchy. As he no longer had to rule, King Bhumibol could dedicate his life to charity works.¹²² First, amidst the backdrop of the campaign against communist insurgency, Buddhism and the king were propagated as the pillars of Thainess.¹²³ He was seen traveling far and wide to the remote corners of the country, bringing with him new agricultural technology to transform the livelihoods of the local poor. As a result, government propaganda portrayed him as accumulating his barami, not just from practising dhamma in the traditional sense, but also from working hard to improve the well-being of his subjects. His image as a virtuous leader contrasted sharply with that of politicians whose many corruption scandals failed to impress the populace. The king became the voice of public morality, preaching to Thais, especially politicians, on how to behave.¹²⁴ There is a large body of writings that confirm Bhumibol's observance of rajdhamma and his status as a Dhammaraja.¹²⁵

Perhaps, the most influential idea about the modern Dhammaraja was introduced by Buddhadasa. The abbot of Wat Suan Moke was known for his radical rationalistic interpretation of Theravada Buddhist dhamma which attracted the attention of the urban middle class and elites. Despite his cosmopolitan understanding of dhamma, Buddhadasa shared with other Buddhist intelligentsias a distrust of the western-introduced political ideologies, both communism and democracy.¹²⁶ According to Buddhadasa, these theories would not lead society to peace because they lacked a correct understanding of the nature of Thais.¹²⁷ Buddhadasa expressed his dissatisfaction with democracy, that it allowed the masses to rule while the masses themselves were still selfish.¹²⁸ Chaos was thus the foreseeable consequence.

¹²¹ Thongchai, *Toppling Democracy* 25-27; William A. Callahan, 'The Discourse of Vote Buying and Political Reform in Thailand' (2005) 78 *Pacific Affairs* 95; Prajak Kongkirati, 'Murder and Regress: Violence and Political Change in Thailand' in Michael J. Montesano Terence Chong, and Mark Heng (eds) *After the Coup* (ISEAS Yusof-Ishak Institute 2019) 202-209.

¹²² Thongchai, *Toppling Democracy* 19-21; Thongchai Winichakul, *Thailand's Hyper-royalism: Its Past Success and Present Predicament* (ISEAS Yusof-Ishak Institute 2016) 14-16.

¹²³ Somboon, *Buddhism, Political Authority, and Legitimacy* 128-137.

¹²⁴ Thongchai, *Toppling Democracy* 29.

¹²⁵ See Merieau, *Buddhist Constitutionalism in Thailand* 20-21.

¹²⁶ See Buddhadasa's criticism of socialism and democracy in Wanpat Youngmevittaya, 'พุทธศาสนกับการให้ความชอบธรรมต่ออุดมการณ์แห่งรัฐไทย' [Buddhadasa and the Legitimation for the Ideology of the Thai State] (2017) 13 *Journal of Social Science Naresuan University* 182; Buddhadasa, *สัมมิกสังคมนิยมแบบเผด็จการ* [*Dictatorial Dhammic Socialism*] (Cremation Memorial of Montha Meunnikorn 1975) 79-84.

¹²⁷ Buddhadasa, *Dictatorial Dhammic Socialism* 14-19.

¹²⁸ Wanpat, *Buddhadasa* 194-195 & 207-208.

Instead, he advocated a dhamma socialist dictatorship model, where the absolute yet benevolent ruler acted on behalf of and for the benefit of the people.¹²⁹ He firmly believed that a benevolent socialist dictator would exercise his power with the sense of duty to his people without letting the people, who are short-sighted, argue and deliberate.¹³⁰ Dhamma is the limit for his dictatorial power. It is obvious that his idea is taken from the Tipitaka, the Great Elect and the World Conqueror regarding the purpose of kingship and dhamma as the component of good governance.¹³¹ Buddhadasa concluded that Thailand had at least one person who fitted his description of the ideal ruler — King Bhumibol.¹³²

Buddhadasa's benevolent dhamma dictatorship was not without flaws. He did not propose any rule of recognition, of how to distinguish a benevolent dictator from an ordinary one. More critically, he did not propose what choice the people had should a dictator no longer be benevolent. His proposal was based on the ideal Tipitaka model, not actual experience of the world.¹³³ Despite its shortcomings, this idea formed the ideological core of the royalist conservative faction with which to attack liberal democracy, especially after 2006.¹³⁴

What is the role of the modern Dhammaraja? Since 1932, it has been commonly agreed that the king cannot lead the government. Yet the Dhammaraja may intervene in times of political crisis, either in person or by someone on his behalf. The king's personal charisma drew people from a number of circles e.g. judges, military generals, businessmen, and technocrats, to form a loose network which is able to influence a normal political process.¹³⁵ In 1992, King Bhumibol summoned the PM and the protest leader to stop the massacre of pro-democratic

¹²⁹ Buddhadasa, *Dictatorial Dhammic Socialism* 84-87

¹³⁰ Wanpat, *Buddhadasa* 209-212.

¹³¹ Buddhadasa, *Dictatorial Dhammic Socialism* 89-113.

¹³² Wanpat, *Buddhadasa* 210.

¹³³ Louis Gabaude, 'Thai Society and Buddhadasa: Structural Difficulties' in Sulak Sivaraksa (ed) *Radical Conservatism Buddhism in the Contemporary World* (International Network of Engaged Buddhism, 1990) 220.

¹³⁴ Pinyapan Pojanalawan, 'ฉันทนิยมนิยมแบบเผด็จการ! วิพากษ์พุทธทาสในวันล้ออายุปีที่ 105' [Dictatorial Dhammic Socialism! Criticism of Buddhadasa on the 105th Birthday] *Prachatai* (27 May 2011) at <<https://prachatai.com/journal/2011/05/35144>> accessed 19 September 2019; Pinyapan Pojanalawan, 'พุทธ(ทาส) พาณิชย์ กับ เผด็จการโดยธรรมของพุทธทาส' [Commercial Buddhadasa and Dictatorial Dhammic Socialism] *Prachatai* (12 June 2018) at <<https://prachatai.com/journal/2018/06/77388>> accessed 19 September 2019. For a defence, see Sanitsuda Ekachai, 'เผด็จการโดยธรรมไม่มี เพราะเผด็จการไม่มีธรรม' [There is no dhammic dictator because no dictator observes dhamma] *The101World* (17 May 2019) at <<https://www.the101.world/moral-fascism/>> accessed 19 September 2019.

¹³⁵ Duncan McCargo, 'Network Monarchy and Legitimacy Crises in Thailand' (2005) 18 *The Pacific Review* 499.

protesters in the incident known as the Black May Uprising.¹³⁶ However, in other circumstances, coup d'états were carried out in his name in order to 'clean up' dirty electoral politics.¹³⁷ These extra-constitutional acts required a legal basis, which was developed by Borwornsak Uwanno.

Borwornsak Uwanno is a royalist public law scholar who incorporates traditional kingship with modern democratic thought. His theory of dual sovereignty is based on the belief that traditional Buddhist kingship shapes the monarchy into the centre and the source of laws in Thailand, a unique quality.¹³⁸ He proposes that, originally, the king, in 1932, agreed to share that power, yet he did not surrender it. He gave his power to the people so they could delegate it to politicians.¹³⁹ The evidence of this co-exercise of power is that, when the coup happens, as often the case in Thailand, there is no vacuum of power because the sovereign power transfers back to the king.¹⁴⁰ The junta can rule the country only after it is appointed by the king. Again, his systematic explanation convinces Thais that the Thai monarch has a unique status so the king can intervene, or even override, normal politics. The monarch's work helps further the glamour of the king, which in turn justifies greater intervention.

Under King Bhumibol's reign, hyper-royalism as coined by Thongchai Winichakul, increased steadily through extensive propaganda and public ceremonies.¹⁴¹ His actions consolidated his role as the keeper of order and justice. Hyper-royalism reached its peak in the late Bhumibol Era (1997-2016) when the king's life stories became full of miracles; for example, he commanded the weather,¹⁴² senior monks insisted the king learned high dhamma,¹⁴³ even his image helped save a policeman from a militia's ambush.¹⁴⁴ In the last decade before his death,

¹³⁶ Wyatt, *Thailand* 304-305.

¹³⁷ Thongchai, *Toppling Democracy* 30-32.

¹³⁸ Borwornsak Uwanno, *กฎหมายมหาชน เล่ม 2 [Public Law, Book II]* (Chulalongkorn University Press, 4th edn, 2005) 144-154 & 184-186.

¹³⁹ *Ibid.*, 231-235.

¹⁴⁰ *Ibid.*, 244-245. See Piyabutr's criticism of Borwornsak's at Piyabutr, *Constitution: History, Constituent Power, and Transition* 177-195.

¹⁴¹ Thongchai, *Thailand's Hyper-Royalty* 20-25.

¹⁴² 'เหล่าพระอริยสงฆ์ยังศรัทธาในพระบารมี!! กล่าวว่า "ในหลวงทรงเป็นพระโพธิสัตว์" พระมหากษัตริย์ผู้ทรงทศพิธราชธรรมอย่างแท้จริง !!' [Enlightened Monks Praise the King's Barami!! Confirming He is Bodhisatta, the Real Kong with Royal Virtues!!] *TNews* (2 August 2017) at <<https://bit.ly/2JDaJyw>> accessed 1 April 2019.

¹⁴³ 'สุดปาฏิหาริย์ !!! แทบไม่มีใครเชื่อสิ่งที่เห็นเมื่อประจักษ์กับดำนับพันคู่ ขณะที่ รัชกาลที่ 9 เสด็จเมืองเพชร !!! เรื่องจริงจากอดีตนาขกรัชมุนตรี' [Former PM: Miracle! No One Believes What They Witness When King Rama 9 Visits Petchburi] *TNews* (30 June 2017) at <<https://bit.ly/2Gid8fX>> accessed 1 April 2019.

¹⁴⁴ 'ปาฏิหาริย์เหรียญ ร. 9 ตำรวจเชื่อช่วยรอดชีวิต' [Miracle of Rama IX Coin Saving Police's Life] *Thairath* (29 August 2016) at <<https://www.thairath.co.th/news/local/767637>> accessed 1 April 2019.

from 2006 onward, King Bhumibol had gained the status of a demi-god, as the traditional Bodhisatta-king. He is known to all Thais as the Dhammaraja.

The modern Dhammaraja has yet to be challenged. King Bhumibol passed away in October 2016 and his son, King Vajiralongkorn inherited the throne. Since the beginning of the Bangkok era more than 200 years again, the throne has been occupied through the hereditary line. No rebel has successfully challenged the House of Chakri. Yet because the idea has been so personalized, it remains to be seen whether the new king can inherit his father's barami, or at least build his own, so that he may continue the modern Dhammaraja legacy.

D. Buddhist Organic Society

This chapter focuses primarily on kingship but the Dhammaraja belief has much wider impact than just making a sacred king, justifying a coup, or patronizing Buddhism. Buddhist kingship shapes Thais' understanding of social and political structure. The whole polity is constructed into what is called the Buddhist organic society.

The Buddhist organic society likens society to one body where an individual act as a part or an organ; each assigned a specific place and roles which he or she must serve.¹⁴⁵ Each person's importance also varies.¹⁴⁶ A body can only work and survive if all components duly fulfil their duties. The notion of Buddhist kingship is based on *bun*. To gain barami, one has to do good deeds and collect *bun* (merit).¹⁴⁷ As described in detail in Trai Phum Phra Ruang, the king possesses the highest level of bun, hence his high barami status.¹⁴⁸ He is therefore at the apex of society, while below there are myriads of classes of people with varying levels of bun. The higher one acquires bun, the higher his or her place in this pyramidal hierarchy. Because bun is encompassing, it determines one's status, wealth, appearance, as well as other qualities. The king lives the most luxurious life which no one dares to imitate.¹⁴⁹ He is also believed to be the

¹⁴⁵ Thongchai Winichakul, *ประชาธิปไตยที่มีกษัตริย์อยู่เหนือการเมือง [Democracy with the King Above Politics]* (Same Sky Books 2013) 207-208; Kasian Tejapira, แนวคิดอินทรีภาพและพ่อปกครองลูกของไทย [Organic and Paternalistic Thoughts of Thailand] *Matichon Weekly* (13 September 2016) at < https://www.matichonweekly.com/column/article_7391 > accessed 19 September 2019.

¹⁴⁶ Chai-anan & Sombat, *Thai Political and Social Ideas* 15-16.

¹⁴⁷ Lucien M. Hanks Jr., 'Merit and Power in the Thai Social Order' (1962) 64 *American Anthropologist* 1247, 1247-1248. Ishii, *Sangha, State, and Society* 14-20, Jackson, *Buddhism, Legitimation, and Conflict* 41-43.

¹⁴⁸ Cholthira, *Trai Phum Phra Ruang* 116.

¹⁴⁹ Chai-anan & Sombat, *Thai Political and Social Ideas* 38.

fairest and wisest. Others belong to the receding strata accordingly and live the life suitable to their assigned level.

The result is a very hierarchical and rigid social and political structure where those of high status are always deemed superior to those of low status, which makes manifest their low barami. Men are not equal. The Buddhist organic society idea is thus contrary to the egalitarian notion of a democratic society. Some Buddhists argue that this hierarchy poses no problems as long as everyone follows dhamma and treats one another rightly according to one's status.¹⁵⁰ In reality, the idea seems to only preserve the status quo of those in power.

In ancient times, organic society thinking was manifested through the *sakdina* system. Sakdina, or the field of power, assigned every member of the Thai society, from the king to the courtiers of various ranking, to monks of various ranking, to peasants of varying professions, their sakdina ranking.¹⁵¹ Sakdina was rooted in the land management system. The king, since he owned the whole kingdom, needed no sakdina assignment but his viceroy got the highest ranking of symbolic 100,000 rai.¹⁵² Even a slave would earn 5 rai. Each individual enjoyed entitlements according to their ranking. The higher the rank, the more privileges one would get. King Chulalongkorn abolished the system when he established a modern administration. Nonetheless, the idea of an organic society persists in the concept of civic duty. Thai constitutions require Thai citizens to fulfill their duty as Thais to support the whole body of Thailand.

E. Relationship with the Sangha

Buddha may not have envisioned an established order. Each temple was supposed to be self-regulating. However, as a temple must rely on the alms given by nearby communities, the lay-sangha relationship was born. At the highest level, the most powerful and wealthiest person in the kingdom became the best patron.

The idea of the Dhammaraja dictates that the king be a good Buddhist by observing dhamma as well as taking care of a sangha. Cakkavattinasutta is clear that caring for the wellbeing of

¹⁵⁰ Wanpat, *Buddhadasa* 194-195.

¹⁵¹ Akin, *The Organization of Thai Society in the Early Bangkok Period* 29-32.

¹⁵² Rai is the indigenous unit of land measurement. One rai equates 1,600 sq. m.

priests helps a king attain universal monarch status. A healthy Sangha population grows his merit. The downfall of a sangha signifies the spiritual downfall of the kingdom as there is no salvation available. Buddha's life story also suggests his inclination to royal patronage. He enjoys recognition and donations from rulers and he reciprocates by facilitating their wishes. According to the king's request, Buddha forbade the ordination of the king's men who sought monastic refuge to avoid joining the army.¹⁵³ He also permitted monks to waive vinaya should a king under whose kingdom they are living wishes so.¹⁵⁴ This positive relationship laid the foundations for the Buddhism-state relationship which King Asoka later completed.

Asoka took patronage to the highest level possible. In addition to material support, he closely oversaw monastic affairs. Responding to the growing concern that many men were attracted to monkhood because of material benefits, King Asoka conducted a test to expel those who failed to show adequate understanding of dhamma.¹⁵⁵ Meanwhile, he sent nine envoys of monks to disseminate Buddhism throughout Far East Asia.¹⁵⁶ As a result of Asoka's support and protection, Buddhism truly became a world religion. His behaviour set a standard which all Theravada kings strove to follow.

From Asoka's story, patronage covers two aspects: support and protection. The term is still used in Thai constitutions. Support can be material as well as spiritual. A pious king makes donations and presents himself as a faithful follower. Protection initially means protecting the Sangha from internal threats of division, disunity, decay, or schism. He orders the recension of the Tipitaka and adjudicates on serious monastic disputes. Duty compels the king to use violence too, for example, to purge rogue monks or heretic groups. He must also fight against non-Buddhist invaders, e.g. Hindus and Muslims, and later, western colonial forces.

Patronizing the Sangha is a precarious business. A monk may abandon his social caste before entering into the monkhood, but Theravada tradition regards a monk as belonging to a superior class to that of laypeople. Tradition dictates that even the most powerful king must bow to the least junior monk, a symbolic gesture of being inferior. Asoka offered his throne as a seat to a young monk who was about to teach him dhamma. King Ramkhamhaeng acted similarly.¹⁵⁷

¹⁵³ Vinaya Pitaka Vol 4: Vinaya. Mahā (1).

¹⁵⁴ Kieffer-Pulz, *What Vinayas Can Tell Us about Law* 55-56.

¹⁵⁵ Tambiah, *World Conqueror and World Renouncer* 162-163.

¹⁵⁶ *Ibid*, 54.

¹⁵⁷ Swearer, *The Buddhist World of Southeast Asia* 99.

Thus, if a king oversteps the mark, he can easily be seen as a tyrant. When King Taksin claimed that he had attained higher dhamma, he forced monks to bow to him. This blatant act crossed the line. He quickly lost legitimacy and a riot erupted.¹⁵⁸ However, if a monarch pays inadequate attention, he risks losing his throne. In another instance, when King Narai appeared to neglect the well-being of the Sangha, the monks participated in the coup that ended Narai's dynasty and expelled Catholic priests from Ayuthaya.¹⁵⁹ The question is how can a king, the leader of the secular class, order, discipline, or even purge exalted ones while maintaining his pious image.

Only the Dhammaraja may overcome this dialectical tension. The Dhammaraja is the head of the temporal world, but he must take care of the spiritual world as well. The task is ever more important as his mirror image, Lord Buddha, is long gone so the two wheels are imperfect. Besides, the king actually possesses the image of the Bodhisatta too. This allows him to be in charge of the monks. Any king could try to proclaim himself the Dhammaraja, but no monk can claim to be the next Buddha, who will not arrive for several thousand years from now. The Sangha Raja, the Supreme Patriarch, is unable to resist the authority of the king who, in reality, is more powerful and has better resources. Of course, the king must still be aware of his own limits. The status of the Dhammaraja must be earned so the scope of his competence depends on the personal charisma of that particular king. Asoka is a fine example of a highly accomplished king, militarily and spiritually, one who confidently intervened in monastic matters. On the contrary, an unpopular, or less pious, king is more limited in exercising his power. A weaker king whose legitimacy has expired may face a backlash as King Taksin did.

King Rama I of the Bangkok era promulgated ten rules to govern the conduct of monks, from prohibiting monks from practising the dark arts, to refraining from venturing into inappropriate places. The laws, collectively known as *Khod Mai Phra Song* (Laws of Monks), was an attempt to restore the public's trust in the Sangha after years of war and conflict, when governmental oversight was absent and monks were lax. His successors issued similar laws in a piece-meal manner until the creation of the official Sangha by King Rama V. Since then, the Sangha Council has governed the Sangha with the king controlling the Sangha Council. The Sangha creates orthodoxy and orthopraxy and eradicates variants and factions. The king's patronage

¹⁵⁸ See Nidhi, *Thai Politics in the Reign of King Thonburi* 412-423.

¹⁵⁹ Seri, *Catholicism and Thai Society* 65-66.

thus covers all monks in the kingdom. The Sangha rationalises its obedience to the temporal law by admitting the imperfection of the vinaya. The vinaya is a codified judge-made law. Buddha was aware that he had not covered every aspect of monastic life, and nor could he foresee future problems. He even gave his disciples permission to withdraw some immaterial vinayas. Hence, despite the Theravada's reputation of being an originalist conservative branch of Buddhism, the Sangha accepts the king's law in supplementing its own code of conduct as necessary. The 1932 Revolution ended the absolute monarchy, but the constitutional monarchy shared the duty of the king toward the Sangha with the newcomers of politicians of civilian and military backgrounds.

F. Conclusion

Notwithstanding monastic republican governance, Buddhist political theology revolves around absolute monarchy. The Theravada tradition depicts a king in many roles; as the elected leader, the benevolent conqueror, and the sacred heir of Buddha. Deeply entrenched in the consciousness of Thais, these concepts still matter in a modern Thailand where the Dhammaraja, or Buddhist kingship, has been restored.

To what degree is the Dhammaraja compatible with democracy? On the one hand, the Dhammaraja explains the current constitutional arrangement; the king must be Buddhist and act as the patron of Buddhism. On the other hand, when electoral politics is undermined, the Dhammaraja is employed to justify the use of violence, hierarchical social and political stratification, as well as extra-constitutional intervention. All of these have become challenges to Thailand's path to liberal democracy. The next question is how is the concept of law understood and enforced under such culture.

VII. Traditional Buddhist Constitutionalism: The Nature and Sources of Positive Law

Discussion in this chapter takes on the different dimensions from a familiar topic of Buddhism and politics into a less familiar topic of the Buddhist idea of positive law. Buddhist law remains the path less travelled for the law and religion community. The Buddhist legal tradition is less known to the world than that of Judaism, Christianity, Hinduism, Islam, or Confucianism. Conventional wisdom assumes that religion is ascetic in nature and so it distances itself from the matter of law and governance. However, if, as the previous chapter shows, Buddhism continues to shape Thailand's political culture, why would Buddhism not also influence the legal system?

Buddhism offers very perplexing images regarding law. Buddha never promulgated an equivalent of Shariah for Buddhists to follow, yet the sangha is highly legalistic. Monastic life is highly legalistic but Buddhism has never produced renowned legal scholars. There has been no Aquinas or Bartolus in Buddhism.¹ The late Andrew Huxley claimed that, east of the Ural Mountains, Buddhist influence on the law of the Orient is no less important than that of Roman law on European legal culture.² However, he himself admits that in India and China, the two largest sources of Asian civilization, Buddhism's influence was obscured by Hindu and Confucian legal thought.³ Elsewhere, the Islamic legal tradition has featured more prominently. Only in mainland Southeast Asia, the stronghold of Theravada Buddhism, has the Buddhist legal tradition flourished.

Yet, most works on Buddhism and law concentrate around the studies of the ancient Buddhist law of mainland Southeast Asia. Among Thai legal scholars, no significant studies have been conducted beyond the seminal work of Robert Lingat in 1950 CE.⁴ As if Buddhism's legal influence ceased to exist after the reforms a century ago, there is no systematic, in-depth study of Buddhism's influence on Thailand's modern positive law despite evidence suggesting otherwise. This leaves a big void in the field of law and religion, which this chapter attempts to address.

¹ Peter Stein, *Roman Law in European History* (Cambridge University Press 1999) 38-68.

² Huxley, *Buddhist Law* 205.

³ Glenn, *Legal Traditions of the World* 289 & 330-332.

⁴ Robert Lingat, 'Evolution of the Concept of Law in Burma and Thailand' (1950) 38 *Journal of Siam Society* 9; Robert Lingat, *ประวัติศาสตร์กฎหมายไทย เล่ม 1 [Thai Legal History I]* (Social Science and Humanities Textbook Project, 1983).

This chapter's objective, thus, is to continue the discussion on Buddhism and law following on from Huxley and Lingat. It begins by asking a simple question; what is 'law' in Thai Buddhism? To answer this question, the chapter explores the many layers of law in the Buddhist universe. The Buddhist world has a few different sets of norms which are all called law. Each set enjoys different hierarchies and operates in different scenarios applying to different groups of people. How these laws are related and interact is little understood. Understanding the idea of laws, we can then ask the second question of how the Buddhist legal concept is still relevant to the contemporary legal system.

A. Dhamma: The True Law

A survey of Buddhism and law literature usually results in four sub-fields, which represent the four types of law in the Thai Buddhist world: dhamma, vinaya, ancient secular law, and modern positivist law. The most important is dhamma. The term carries several meanings depending on the context. Dhamma may be understood as teaching, truth, nature, and law, among others.⁵

Throughout his life, Buddha preached dhamma to the world and that is the most common understanding of dhamma; that it is Buddha's teaching.⁶ Yet what precisely did Buddha teach? Prince Siddharta embarked upon a quest to learn about the truth of life, and he became Buddha when he understood the dhamma. He became aware of what he claimed to be the truth of the world, about the natural state of everything, all beings as well as objects.⁷ In this instance, dhamma is the truth.⁸ This truth is also the law: the rule of cause and effect, the impermanence of things, and suffering, the third meaning of dhamma.⁹ The last meaning of dhamma is something proper.¹⁰ A person shall live according to the proper path of dhamma. Suffering can be lessened or vanquished entirely if a person understands dhamma, or better practises it. On the other hand, ignorance of the dhamma only increases suffering, trapping that being in the endless cycle of rebirth.

⁵ Payutto, พจนานุกรมพุทธศาสน์ ฉบับประมวลศัพท์ [Buddhist Dictionary: vocabulary] (The P. A. Payutto for Dhamma Foundation, 31st edn., 2018) 156-157.

⁶ Rupert Gethin, 'He Who Sees Dhamma Sees Dhammas: Dhamma in Early Buddhism' (2004) 32 *Journal of Indian Philosophy* 513, 516.

⁷ Payutto, *Buddhist-style Juridical Science* 12-13.

⁸ Gethin, *He Who See Dhamma* 517-518.

⁹ *Ibid*, 519.

¹⁰ *Ibid*, 516-517.

Taking all meanings of dhamma into consideration, dhamma as law is the law of the highest order.¹¹ This law is described as constant and eternal, operating independently from time, place, or person. Even non-Buddhists face suffering and impermanence and the karmic law. This law has no maker. It is the natural law of the world. Buddha never claimed to invent dhamma, but that he only learned it through meditation. He revealed this *lex aeterna* to the world in the form of his words, later written into the Tipitaka. This is the truth of the universe and so no living creature can escape from it. Things come and go according to dhamma. Although it does not have an enforcing mechanism, consequences will befall everyone sooner or later. It is therefore the appropriate behaviour, even a duty, to observe dhamma.

Similar to Aquinas's *lex aeterna*, dhamma is the perfect law, providing perfect, natural, justice.¹² But unlike Aquinas's, dhamma is already revealed to the world as in the Tipitaka; a man does not have to discover it through reasoning or inclination. Dhamma becomes the ideal model which the laws of the imperfect worlds try to imitate: the canonical law of vinaya of the sangha, and the ancient legal code of the temporal world.

Dhamma is associated strongly with natural justice. When a ruler fails to uphold dhamma, the punitive consequence is sometimes man-made e.g. a rebellion or a coup, but, at least in folklore, the natural disasters of flood and drought often occur.¹³ The association of dhamma and law is evident in Siam's first textbook for children, the Story of Phra Chai Suriya (BE 2383-2385).¹⁴ The rhyme tells the story of a kingdom where the king failed to prevent corruption among his judges. Once justice fails, people do not revolt against the ruler but a natural disaster in the form of a huge flood kills all the corrupt. Only the benevolent Prince Chai Suriya and his wife survive. They are later rescued by the god Indra. The story vividly depicts the importance of justice in upholding not only the political order, but also natural harmony, and the interconnectedness of both orders. This is among the first lessons Siamese children learn in their early formal education.

¹¹ See French & Nathan, *Introducing Buddhism and Law* 4-5; Payutto, Prayudh, *Buddhist-style Juridical Science* 20-21.

¹² See D. J. O'Connor, *Aquinas and Natural Law* (Macmillan 1967) 59.

¹³ Chai-anan & Sombat, *Thai Political and Social Ideas* 46-51.

¹⁴ Chosita Maneesai, พินิจภาพพระไชยสุริยาของสุนทรภู่ [Analysis of Sunthorn Phu's Phra Chai Suriya] (2012) 37 Journal of Royal Institute 59.

Dhamma, or *tham* in Thai, is closely associated with the concept of law and justice. Dhamma thus confers a norm higher than a normal man-made rule. *Kwam-pen-tham* is fairness and another similar word, *yu-ti-tham*, is justice. Another regularly encountered term is *nititham* which is a Thai translation of the rule of law. *Niti* is law, hence the dhamma of law, and law users too.¹⁵ Another term coined recently is good governance or *Thammapiban*.¹⁶ In summary, the Thai legal mind is heavily influenced by dhamma, in all the senses described above. Dhamma is the true, natural, and proper goal that judges must strive to achieve with the right procedures to follow. Dhammic law is the ideal after which man-made law must try to mould itself.

B. Vinaya: Monastic Derivative of Dhamma

Vinaya is the other half of Buddha's teaching. Dhamma is Buddha's revelation of truth and vinaya is his law. Vinaya is discipline.¹⁷ The Book of Vinaya (Vinaya pitaka) forms one of the three Books of Buddha's Teaching. As a monastic code for the gathering of monks, known as the sangha, it resembles modern positive law the most.

Why does a monastic community need vinaya? The rationale of vinaya is that vinaya helps the sangha community stay united and appear respectable to outsiders.¹⁸ In the early years of Buddhism, the sangha was small and no law was needed for this close-knit community.¹⁹ Every recruit was said to be an *Arahat*, the enlightened one, so he already knew right from wrong and behaved accordingly.²⁰ Vinaya became necessary only after the sangha expanded. Non-arahat monks behaved erroneously, leading to disputes and complaints from both within and outside the monastery, to which Buddha responded by issuing a rule. Vinaya holds the community together. The orderly sangha brings to it respect from the lay communities whose spiritual and material supports are vital to the survival of the sangha. Throughout his lifetime, Buddha legislated one vinaya after another in a piece-meal manner. One prohibition at a time, vinaya

¹⁵ See Thanin Kraivixien, 'บทบรรณาธิการ' [Editorial] in Eakaboon Wongsawatkul (ed) นิติรัฐ นิติธรรม [Nitirat Nititham] (Faculty of Law, Thammasat University 2010) 30-35.

¹⁶ See Merieau, *Buddhist Constitutionalism* 292-293.

¹⁷ Payutto, *Buddhist Dictionary* 87.

¹⁸ *Ibid*, 402; Gethin, *The Foundations of Buddhism* 91-94.

¹⁹ Oskar Von Hinuber, 'Buddhist Law According to the Theravada-Vinaya: A Survey of Theory and Practice' (1995) 18 *Journal of the International Association of Buddhist Studies* 7, 7.

²⁰ Pluem, *Lecture on Law of the Sangha* 19-21; Gethin, *Keeping the Buddha's Rules* 66.

was built in this way. Vinaya is a compilation of case law²¹ that has helped the sangha to survive for more than two millennia. Vinaya is also necessary for practising dhamma. It governs a monk's behaviour even in the very fine details of how to move, to express feeling, to dine, or even to use toilet, so that he is alert and mindful, which helps him control his greed, aversion, and delusion.

But is vinaya another eternal law? On the one hand, vinaya seems like a response to social reality. When the community grows larger and less homogenous, a written rule is necessary. It is made by Buddha, responding to a specific circumstance, conflict, or dispute. It is generally accepted that Buddha would have laid down more vinaya had he lived longer and faced more societal changes.²² Buddha seemed to realize the incompleteness of his vinaya as he gave permission to alter some minor points after his death.²³ In this sense, vinaya should not be understood as a sacred or eternal law.

On the other hand, vinaya refines a person toward enlightenment. Many Buddhists argue that vinaya is a derivative of dhamma, the actual implementation of the abstract principle into a written rule. Although vinaya is not perfect, it is an essential part of living in the sangha, which they regard as the ideal community. Buddha claimed that his religion would survive far longer than that of preceding Buddhas because his monks are disciplined by vinaya.²⁴ Even with Buddha's permission for minor alterations, they prefer not to amend it. They would not risk amending the rules which might disintegrate the community. Right after Buddha's death, in the first Recension Council, even the enlightened disciples of Buddha could not agree on which point was minor, so they decided to maintain all of them as they were.²⁵ They agreed not to add or withdraw any vinaya. Later, according to a well-known story, in the Second Recension, roughly a century after Buddha's death, a dispute arose whereby some monks wished to amend some vinayas. Those who refused became Theravada, the followers of the word of elders, whose lineage Thai monks belong to.²⁶ For many Thais, therefore, vinaya is a sacred positive law.

²¹ Kieffer-Pultz, *What the Vinayas Can Tell Us* 47

²² Pluem, *Lecture on Law of the Sangha* 23.

²³ Vinaya Pitaka vol. 7, Vinaya. Culla 2, p. 308.

²⁴ Vinaya Pitaka Vol 1 : Vinaya. Mahāvi (1), p. 1-18.

²⁵ Vinaya Pitaka vol. 7, Vinaya. Culla 2, p. 310-312.

²⁶ Payutto, *Thai Buddhism in the Buddhist World* 42-43. A different account is given in Gethin, *The Foundations of Buddhism* 49-58.

Vinaya is comprised of two main parts: substantive and procedural. Offences are ranked from the most serious to the lightest crimes. A monk who commits *parajika*, the most serious, automatically has his monkhood invalidated whereas less serious crime results in confinement, probation, and penitence.²⁷ Some vinayas, especially those serious ones, overlap with secular law, for example, manslaughter or theft but many vinayas prescribe the social manner necessary for the sangha's harmony and integrity, e.g. prohibition to run, toilet manner, or table etiquette.²⁸ In each vinaya, the story begins with why Buddha had to prohibit such action. It then continues with cases in the same category. Thus, vinaya is organized into a list of rules. Due to the different segmentation, all three surviving variants have different numbers. Theravada Buddhism has 227 rules for monks and 314 for female monks. Mahayana has 262 and 371, respectively, while Vajrayana has 219 and 277, respectively.²⁹ However the substance is basically the same, concerned with the rules on non-violence, celibacy, property, and etiquette.

A list of 227 vinaya rules seems long but some are simply redundant. Quite often vinaya goes into minute detail. For example, a series of offences concerns what type of medicine one could take for certain illnesses. One by one, Buddha gave rules on animal fat, plant roots, bitter juice, fruit, sap, salt, powder, raw meat, eyedroppers, stone grinders, etc. until all were covered.³⁰ The list seems outdated to the world of modern medicine. Another vivid example is that on sexual conduct. When Buddha prohibited sexual intercourse with human genitals, monks experimented with other body parts, corpse, animals, and objects. Instead of plainly ruling out sexual misconduct, Buddha prohibited one conduct after another until there could be no sexual conduct.³¹ Critics of Theravada Buddhism find such obsession with details ridiculous.³²

Notwithstanding the obsession with the details on the substantive side, vinaya is quite advanced on procedure. It demonstrates an understanding of fairness and natural justice shared by modern legal thought. Disciplinary action must be conducted before the whole community of

²⁷ Kieffer-Pultz, *What the Vinayas Can Tell Us* 49; Hinuber, *Buddhist Law According to the Theravada-Vinaya* 10-15.

²⁸ See the summary of Vinaya Pitaka in Hinuber, *Buddhist Law According to the Theravada-Vinaya*.

²⁹ Kieffer-Pultz, *What the Vinayas Can Tell Us* 49; Gethin, *The Foundations of Buddhism* 89.

³⁰ Vinaya Pitaka Vol 5 : Vinaya. Mahāvagga (2)

³¹ Vinaya Pitaka Vol 1 : Vinaya. Mahāvi (1)

³² Mookhom, *Gold Flake on the Face of Buddha*; Shravasti Dhammika, *Broken Buddha: Critical Reflections on Theravada and a Plea for a New Buddhism*, available at <<https://www.bhantedhammika.net/the-broken-buddha>> accessed 19 September 2019.

monks.³³ There are rules on the admissibility of witnesses. Vinaya is not applicable to the first troublemaking monk; *nulla crimen nulla poena sine lege*.³⁴ Intentional and negligent acts receive different punishments.³⁵ However, mental illness is a legitimate defence.³⁶ The accused has the right to defend himself. A certain monk is assigned an investigator, a specialist in interpreting and applying vinya, known as *Vinyasathara*.³⁷ He must consider the facts, relevant rules, and commentary. This legal culture makes the sangha community very legalistic. Some Lankan monks were so respected for their legal knowledge that the king certified their rulings on lay cases as of equivalent validity to those of a lay judge of his own court.³⁸

For Theravada Buddhism, vinaya is a serious issue because it is what defines Theravada identity. According to a well-known story, in the Second Recension, roughly a century after Buddha's death, a dispute arose whereby some monks wished to amend some vinayas. Those who refused became Theravada, the followers of the word of elders, while lenient monks became Mahayana.³⁹ Theravada is proud of its strict adherence to vinaya, sometimes too pre-occupied with it. Some vinaya disputes lasted over many decades, calling attention from the king whose duty is to upkeep the sangha's unity. A dispute on how to wear a saffron robe eventually attracted the involvement of a Burmese king, but still unsuccessfully.⁴⁰ It took several kings before the dispute was dissolved. Such a sectarian dispute could possibly lead to a breakaway into a new lineage which has its own interpretation of certain vinayas. Interestingly, dhamma disputes have not garnered as much attention or rigorous engagement as vinaya disputes have. The Theravada sectarian division is therefore the result of orthopraxy, not orthodoxy.⁴¹ When Prince Mongkut founded a new sect of Thammayuttikanikaya, his emphasis was not on orthodoxy, but orthopraxy. He wished to establish a sect subject to a stricter interpretation of vinaya, not of dhamma.⁴² The colour of robes is still a hotly debated topic.⁴³ It is common for Theravada Buddhists to evaluate good or bad monks by their strict

³³ Kieffer-Pultz, *What the Vinayas Can Tell Us* 50; Huxley, *Buddhist Law* 206-207.

³⁴ *Ibid*, 53.

³⁵ *Ibid*, 54.

³⁶ *Ibid*, 53.

³⁷ Hinuber, *Buddhist Law According to the Theravada-Vinaya* 22.

³⁸ *Ibid*, 25-26, 28.

³⁹ See Payutto, *Thai Buddhism in the Buddhist World* 42-43.

⁴⁰ Hinuber, *Buddhist Law According to the Theravada-Vinaya* 39-41.

⁴¹ Nidhi, *State and the sangha's establishment of sects*.

⁴² Tambiah, *World Conqueror and World Renouncer* 209-212.

⁴³ ‘พระธรรมยุตเปลี่ยนสีจีวร เริ่มใช้วันวิสาขบูชา 13 พค’ [Thammayut Monks Change Robe Colour from 13 May, Visakabucha]

Thai Civil Rights and Investigative Journalism (16 February 2014)

<<https://www.tcijthai.com/news/2014/02/scoop/3853>> accessed 1 April 2019.

adherence to vinaya. Again, focus on vinaya leads to criticism of the preference of form over substance.⁴⁴

Theravada's strict adherence to vinaya is subject to two exceptions. First, the rule-maker is not bound by rules. Buddha forbade monks from performing miracles. Yet when he was challenged by non-Buddhists, he performed miracles on the grandest scale by showing his twin-images in the two contrasting acts, standing and reclining, walking and sitting, awake and asleep, in fire as well as steam, awing his challengers who in turn criticized him for breaking the rule. When questioned, Buddha explained that a ruler-maker was above the rules like the owner of a mango orchard, who forbade all from picking his fruits, was free to collect his mangoes.⁴⁵ Whether this analogy is correct is debatable but it shows that vinaya cannot bind its maker.

Another exception is the monarchical exercise of power over the sangha. Despite the vow not to amend, monks generally accept monarchical control as a fact of life. Vinaya is not complete, so the king, in the quest to take care of the sangha, may issue more rules to govern them.⁴⁶

Intended for monastic life, vinaya's influence eventually reached a wider audience. When Buddhism was introduced to Southeast Asia, vinaya provided local rulers with the model of a codified law more complex than their own. Offences were systematically listed, segmented into details, and procedures were much more structured. Besides, it came with rich commentaries from Indian and Lankan scholar monks. It thus became a prototype for ancient legal codes of Southeast Asian kingdoms. Through its indirect contribution, vinaya trained lawyers, and a life in the sangha groomed lawyers through its legalistic culture. Many Burmese lawyers received their training during their time at temples.

C. Dhammasastra

Andrew Huxley described three laws of the ancient Buddhist kingdoms which derived from dhamma, each governing a group of residents of that kingdom.⁴⁷ Kings had to follow

⁴⁴ Shravasti Dhammika, *Broken Buddha*.

⁴⁵ Yamaka Patihariya, *Atthakatha* Book 23: Dha.A.6 attakodhavadagga.

⁴⁶ Plum, *Lecture on Law of the Sangha* 30.

⁴⁷ Huxley, *Pali Buddhist Law in Southeast Asia* 168.

rajdhamma, which was dhamma for rulers. Monks abided by vinaya, while the rest, the ordinary subjects, were subject to the Buddhist code of *dharmasastra*.

Dhammasastra is unique to Southeast Asia, the common heritage of Thais, Burmese, Laotians, and Cambodians. Buddhism bred this specific genre of Buddhist-inspired law, which, until the 19th century CE, spread from the Bay of Bengal in the west to the Cambodian empire in the east, as far north as Assam and Southern China, to the Upper Malay Peninsula.⁴⁸ The name is very telling as ‘dhamma’ is never used to refer to secular law in the Indian context.⁴⁹ Even Sri Lanka, the Theravada Buddhist partner-state, did not have an equivalent for it.⁵⁰ Lingat proposed that dhammasastra first emerged as a legal code in the Mon Kingdom in what is today’s Southwest Myanmar, the ancient centre of Southeast Asian Buddhism.⁵¹ Dhammasastra may have originated from the Law of Manu, the Hindu code, but the Mon had ‘buddhi-ized’ as well as ‘indigenized’ it into the local form.⁵² The first copy appeared in the 13th century CE although some experts believe that the law may have existed much earlier around the late first millennium.⁵³

What exactly is dhammasastra? Dhammasastra is not a single specific book of laws, and there is no original copy. Rather, it is better understood as a regional cult with each ancient kingdom having its own version. Unsurprisingly, given its widespread adoption, it inspired countless local variations. Huxley proposes three sub-categorizations of Western, Eastern, and Northern dhammasastra. Western refers to the area along the eastern coast of the Bay of Bengal where today lies Myanmar, the ancient home of the kingdoms of Mon, Ava, and Burma. Western Dhammasastra was developed mainly by specialized lawyers, focusing on caselaw; hence, Huxley’s term ‘common law Buddhist.’⁵⁴ Eastern dhammasastra centred on the central basin of Chao Praya River where the Kingdom of Ayuthaya was located, spreading eastward to Laos and Cambodia. Huxley calls the Eastern sub-type the state-centred Dhammasastra because of

⁴⁸ *Ibid*, 168-169. But see an alternative view on dhammasastra in Burma, that lawyers and monks did not uncritically accept dhammasastra as Buddhist law in D. Christian Lammerts, ‘Narratives of Buddhist Legislation: Textual Authority and Legal Heterodoxy in Seventeenth Through Nineteenth-century Burma’ (2013) 44 *Journal of Southeast Asian Studies* 118.

⁴⁹ Reynolds, *Buddhism and Law – Preface* 3.

⁵⁰ Lammerts, *Genres and Jurisdictions* 190.

⁵¹ Lingat, *Evolution of the Concept of Law* 12-13.

⁵² *Ibid*, 13-15.

⁵³ Huxley, *Studying Theravada Legal Literature* 69.

⁵⁴ *Ibid*, 71 & 72.

the dominant role of the king and his legal peers.⁵⁵ Northern dhammasatra concerned the landlocked area and countries to the north of Myanmar and Southern China. Perhaps because these Tai kingdoms were constantly attacked by warring superpowers from all sides, and their kings played a limited role in developing dhammasastra, their dhammasatra development was led by monks, who authored the texts as well as tried cases.⁵⁶

Although vinaya is the most important work of legal literature in monastic Buddhism, dhammasastra is more complicated than being a secularized version of vinaya. Lingat and Huxley saw dhammasastra as an amalgamation of dhamma, vinaya, and local customs. It generally begins with the story of Manu's quest for perfect justice. In Hindu's Manusamastri, Manu is the first human, the ancestor of all men but in Buddhism's dhammasastra, he is a judge in the court of Mahasamata, the first king of the world according to Agganyasutta.⁵⁷ Manu was upset by his own incompetence so he travelled to the end of the universe, where he discovered the text of dhammasastra written on the Universe Wall. After learning the text, he flew back to the palace and composed the law called dhammasastra.⁵⁸ Details of the story may differ but the essence remains the same.⁵⁹ Dhammasastra, similar to dhamma, was discovered and then revealed to the populace. There is no author of dhammasastra.

Dhammasastra is organized into lists of various topics. After the opening story, it covers types of manslaughters, debt, thefts, wives, and prejudices that judges had to avoid, among other lists.⁶⁰ These lists are drawn from several sources. Lists from vinaya probably contributed to the law on crimes, property, and theft while dhamma came in the form of stories of Buddha's incarnations and the role of the king and judges.⁶¹ Others, such as family and estate laws, were said to come from local norms.⁶² At least in Northern Thailand, the story of when Buddha was born to become a young genius named Mahosadha who used his wit and wisdom to judge justly became a hypothetical precedent for premodern lawyers.⁶³

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*; Huxley, *The Traditions of Mahosodha*.

⁵⁷ Lingat, *Evolution of the Concept of Law* 15.

⁵⁸ *Ibid.*

⁵⁹ See Burmese legal tradition in *ibid.*, 17-18.

⁶⁰ See Baker & Pasuk, *The Palace Law of Ayutthaya* 19-26.

⁶¹ Huxley, *Studying Legal Literature* 70.

⁶² *Ibid.*

⁶³ Huxley, *The Traditions of Mahosadha*

However, Christian Lammerts is able to show that, at least in the seventeenth century Burma, monastic commentators labelled dhammasastra as a heterodox literature, not coming from the wall of the universe. Still, their acceptance of dhammasastra as law was rooted in the understanding that all the Buddhist kings, from the Great Elect and other kings in Jatakas, legislated rules that were harmonious with dhamma.⁶⁴

Thus, dhammasastra is another category of a sacred law of the ancient Southeast Asia. It bridges a gap between dhamma and the king's law. A Buddhist ruler faces a dilemma when a man commits a crime. Should kamma punish him or will the king? Dhammasastra offers a punishment according to dhamma, the true law, handed down by the worldly ruler.⁶⁵ A description of punishments in the Siamese dhammasastra mirrors those in hell; a criminal may have his skull pierced open and burnt with hot iron, or his skin peeled, his lips and tongue hooked, his torso buried in the ground or he may be burned alive, eaten alive by hungry dogs, or deep-fried alive before being fed his own flesh.⁶⁶ It is doubtful whether any listed punishment had ever been implemented but symbolically it resembles the description of hell in the ancient stories that described the Buddhist cosmology i.e. Trai Phum Phra Ruang and Phra Malai.⁶⁷

Dhammasastra was not the only source of law. Another type of law, Rajsastra, was often mentioned. As the name suggests, Rajsastra is king-made law. Although the king may not rewrite the sacred dhammasastra, he was the ultimate ruler and judge. By exercising his administrative and judicial power, he could issue a decree provided it was not contrary to dhammasastra.⁶⁸ A subject dissatisfied by the court's ruling could try to appeal a case before him. That case then turned into a legal precedent to be recorded and collected.⁶⁹ Therefore, the king could make laws too. This collection was thought to be supplementary to dhammasastra. However, the distinction between the two laws was not always clear-cut. In reality, rulers often tried to share the sacred aura of dhammasastra with their orders. Several dhammasastra contained the name of a specific kings as the author, or titled as the royal dhammasastra,

⁶⁴ Lammerts, *Narratives of Buddhist Legislation* 137-141.

⁶⁵ Huxley, *Buddhist Law* 208.

⁶⁶ Sawang Boonchalermvipas, ประวัติศาสตร์กฎหมายไทย [*The Thai Legal History*] (15th edn, Winyuchon 2016) 99-100

⁶⁷ See Reynolds, *Buddhist Cosmography in Thai History* 205; Jana Igunma, 'A Buddhist Monk's Journeys to Heaven and Hell' (2013) 6 *The Journal of the International Association of Buddhist Universities* 65. Personal communication from the author to Chris Baker, historian (28 September 2019).

⁶⁸ Dhani, *The Old Siamese Concept of the Monarchy* 98-100; Lingat *Evolution of the Concept of Law* 26.

⁶⁹ Lingat, *Evolution of the Concept of Law* 26.

blurring the line.⁷⁰ In the case of Siam, evidence suggests that rajasatra succeeded in overtaking dhammasatra.⁷¹ Huxley categorized Siamese dhammasatra as the state-centred law meaning the king actually led the making of the so-called dhammasatra. Therefore, despite being known as Buddhist law, the king played no less important role in making dhammasatra. Actually, Baker and Pasuk suggest that dhammasatra might arrive in Siam significantly later than Lingat and Huxley had believed. The name ‘dhammasatra’ was mentioned in the inscription from the fourteenth century CE but they find no concrete evidence of dhammasatra anywhere.⁷²

The problem is that much written evidence from the Ayutthaya era was lost when the city fell to the Burmese army in the seventeenth century CE. But in the beginnings of Bangkok, when King Rama I heard an appeal on divorce, he opined that the law which allowed divorce without any cause was absurd. Although he followed that law in order to uphold legal certainty, he complained that the downfall of Ayutthaya left only a corrupt version of dhammasatra.⁷³ He declared legal reform as his next mission after the recension of Tipitaka. This statement is very telling as it showed the connection between dhamma and law as the two necessary pillars holding the kingdom together. He thus ordered the law recension in 1805. As king of the new dynasty, this recension provided him the good opportunity to insert his own rules into the sacred book.⁷⁴ Nevertheless, he was careful not to proclaim the new code, known as the Three Seals Code, as his legislative product. He insisted that it was a mere correction of an old lost law. Nonetheless, in comparison with Burmese dhammasatra, the Three Seals Code contained more lists from king-made law.⁷⁵ The Three Seals Code commenced with the usual narrative of Manu, the servant of Mahasammata King, discovering the law at the universe’s end. Only this first chapter was called dhammasatra. Then it was followed by the Four Prejudices which reminded judges the importance of impartiality. The rest went in a very random order, from the Palace Law, to the ranking system, to procedural laws, to marriage, slavery, estates, obligations, and many criminal offences.⁷⁶

⁷⁰ Huxley, *Studying Theravada Legal Literature* 75-76.

⁷¹ Baker & Pasuk, *The Palace Law of Ayutthaya* 26-27.

⁷² Chris Baker & Pasuk Phongpaichit, ‘Thammasat, Custom, and Royal Authority in Siam’s Legal History’ (Essays on Thai Legal History, Bangkok, 27 September 2019) 6-7.

⁷³ Baker & Pasuk, *The Palace Law of Ayutthaya* 1-2.

⁷⁴ See Lammerts, *Narratives of Buddhist Legislation* 142-143.

⁷⁵ Baker & Pasuk, *Thammasat, Custom, and Royal Authority in Siam’s Legal History* 11-15.

⁷⁶ Baker & Pasuk, *The Palace Law of Ayutthaya* 2-5.

Over a millennium, dhammasatra had served as the main source of law in Southeast Asia for any disputes above village-level. Within the kingdom of Siam, copies of the Three Seal Code and other older dhammasastra have been retrieved from throughout the country, suggesting that local rulers must have often consulted the law when local customs failed to settle disputes. However, it was kept out of the hand of peasants. King Rama III confiscated print versions of the Three Seal Code, reasoning that knowledge, if in the wrong hands, could be harmful.⁷⁷ This prohibition reflected the notion of dhammasastra as a sacred law that was only accessible by the meritorious elites.

Alongside the idea of law came legal personnel. The highly legalistic monastic culture produced premodern legal specialists who were trained to interpret law, reason cases, and write commentaries. Some of these learned men went on to become secular judges. This culture was more prevalent in the western region where the role of lawyers was most prominent. Some even had their names recognized as authorities.⁷⁸ The role of lawyer was least important in the northern region where the influence of Indian civilization is comparatively limited. There, monks were the key actors in dispute settlement and the education of rulers.⁷⁹ Only in the Siamese kingdoms in the east did the monarchs seem to have more control over dhammasastra. Here, the titles of premodern judges suggested that judgeship had once been assigned to brahmins.⁸⁰ The Brahman cult probably originated from the Khmer Empire from where Ayutthaya inherited the cult of divine kingship. The Brahman became part of the Siamese bureaucracy. Unlike in Burma, legal training in the ancient Ayutthaya and early Bangkok was never robust enough to the point of producing authoritative legal scholars. Furthermore, the administrative organization prevented the professionalization of legal careers as often the bureaucrats were entrusted with the judicial function.⁸¹ Administrative agencies also acted as courts. Thus, there was no incentive for specialization. Still, as the only educational institution available, Buddhist temples produced literate men who went into the bureaucracy, including judgeship.

⁷⁷ Sawaeng, *Thai Legal History* 128-129.

⁷⁸ Huxley, *Pali Buddhist Law in Southeast Asia* 170-181.

⁷⁹ Huxley, *The Traditions of Mahosadha* 325.

⁸⁰ David M. Engel, *Law and Kingship in Thailand During the Reign of King Chulalongkorn* (University of Michigan Center for South and Southeast Asian Studies, 1975) 60.

⁸¹ *Ibid.*, 60-62.

The years of dhammasastra have passed, but this amalgamation of law and religion has still left an imprint on the consciousness of Thais. After 1932, the People's Party founded a university specializing in legal study which they named Thammasat University.

D. Modern Positive Law

By the mid nineteenth century CE, the idea of Buddhist law started to feel the wave of change. Partly the change came from within; the Three Seals Code had fallen behind the advances in society. Bangkok kings began to issue laws to address emerging problems that the Three Seals Code had failed to tackle. King Rama I began to assert royal legislative power by issuing, for example, ten laws on the behaviour of monks. His successors followed suit, but the most prominent legislator-king was King Mongkut. Mongkut had spent three decades as a Buddhist monk during which he had had regular communication with Christian missionaries whose criticisms of traditional society must have influenced the prince-monk.⁸² During what is considered among the first Thai enlightenments, he constructed a Buddhism with elements of humanist liberal ideas. Throughout his reign, Mongkut issued a large amount of dispositions. Some were long and law-like,⁸³ while others were shorter and might read more like complaints.⁸⁴ Some decrees merely asked for cooperation. Topics ranged from the trivial personalized issues of the choice of words to be used with the king himself, to concern over sanitation or tax or interaction with foreign merchants and dignitaries.⁸⁵ However, one thing is obvious. Mongkut was the law-maker. More remarkable was the way he decreed these laws; they were written in an easy-to-understand vernacular tongue and accompanied by reasons.⁸⁶ Moreover, he tried to make his law appear more rationalistic and compassionate. His method was to convince rather than coerce his subjects. His decrees came with reasons, and he spoke openly of which behaviour he liked or disliked. He blessed and thanked those who complied and wished ill on the disobedient few.⁸⁷ His style reflected how he perceived himself, portraying himself as an original version of a Buddhist king according to the text, ruling by

⁸² Thanet, *The West and Siam's Quest for Modernity* 408-411; Ishii, *State, Sangha, and Society* 157-160.

⁸³ ประกาศพระราชบัญญัติฝ่ายพระบวรราชวังเรื่องเล่นเบี้ยในพระบวรราชวัง [Palace Announcement on Gambling in Palace Premise] in Chanvit Kasetsiri et al (eds), *ประชุมประกาศรัชกาลที่ 4 [Collected Proclamations of the King Mongkut]* (Thailand Text Book Foundation, 2004) 27-31.

⁸⁴ ประกาศเรื่องเรียกกะปิ น้ำปลา ว่าเชื้อเคซ น้ำเคซ (ฉบับที่ ๑) [Announcement on How to Call Shrimp Paste and Fish Source (1st ver.) in *ibid*, 22.

⁸⁵ *Ibid*, 97-104 & 121.

⁸⁶ Seni Pramroj, *คิงมกุฏในฐานะนักนิติศาสตร์ [King Mongkut the Jurist]* (Winyuchon 2015) 80-82.

⁸⁷ Chanvit et al, *Collected Proclamations of the King Mongkut* 217.

compassion and dhamma, not violence, the product of the two worldviews he had learned. Unfortunately, his measures appeared inadequate. Rarely were his orders observed and evidently, he sometimes repeated the same order several times.

Another initiative of Mongkut was the Royal Gazette publication to announce his laws. Mongkut's laws were no longer circulated only among the elites. It had to be announced according to protocol in order to come into effect. Mongkut even allowed American missionaries to print and sell copies of the Three Seal Code.⁸⁸ By doing so, the notion of law shifted from the sacred natural order only known to the meritorious ruling class to legislation that all subjects had the right to know. The Royal Gazette continues until today.

However, pressure from colonization also played a role. To outsiders at the time, Siam's legal system must have appeared barbaric. Dhammasastra was an entanglement of law and religion where no specialized training institution could produce a legal specialist who would exercise the law professionally. In the 1850s, King Mongkut's Siam entered into trade treaties with 12 western nations plus Japan. The deal forced Siam to concede extraterritorial rights, meaning that the subjects of these 13 nations no longer came under the Siamese courts' jurisdiction.⁸⁹ This legal enclave was due to the disdain of Siam's archaic legal system. Rationality was not a strongpoint of dhammasastra. Also, the law was not publicly accessible, and there was no separation between criminal and civil law. Procedure was also confusing.⁹⁰ Trial was by ordeal and punishment cruel, while judges were incompetent and corrupt. In summary, the Three Seal Code was ill-equipped for a more cosmopolitan Siam. The enclave was extended to cover not only Europeans but also their colonial subjects, in other words, the Chinese, Indians, and Malays. Soon, hundreds walked the streets of Bangkok with special protection as granted by their consuls.⁹¹ This privilege contrasted sharply with local Thais. This concern prompted the authorities to consider legal reform.

Mongkut's successor, King Chulalongkorn, continued reform in the quest to regain Siam's sovereignty. The necessity of Chulalongkorn's administration having a modern legal system was more pressing than ever. Burma, Indochina, and Malaya, some areas of which were Siam's

⁸⁸ Sawaeng, *Thai Legal History* 129; Wyatt, *Thailand* 173.

⁸⁹ Wyatt, *Thailand* 168-173; Loos, *Subject Siam* 42-43.

⁹⁰ Engel, *Law and Kingship* 60-62.

⁹¹ Loos, *Subject Siam* 43-44; Frank C. Darling 'The Evolution of Law in Thailand' (1970) 32 *The Review of Politics* 197, 203-204.

former tributary states, all fell to British and French powers who claimed to bring civilization to backward nations.⁹² In 1896, he ordered the Judicial Reform Committee of foreign experts, mostly European, and his trusted ministers, to draft Thailand's law codes.⁹³

The codification was thorough. The Judicial Reform Committee repeatedly warned itself not to simply copy one western law; local custom was taken into consideration and comparison was made with codes from various European nations as well as the jurisdictions of similar backgrounds, India as well as Japan.⁹⁴ First came the Penal Code in 1908, and then chapters of the Civil and Commercial Code were gradually promulgated from 1925 to 1934.⁹⁵ One by one, a chapter replaced a section of the Three Seals Code. By 1935, the last codes on civil and criminal procedures were out, terminating the service of the Three Seals Code for good. The codification was no small task for it took over 30 years and three kings to complete. By that time, Siam was able to renegotiate treaties to abolish the unfair extraterritorial rights provisions.

Not only did these new codes replace the Three Seal Code, but also other regional dhammasastras. Chulalongkorn's reign saw a period of nation-state building. Bangkok abolished the tributary state system, turning them to provinces under the central administration, and the newly drafted legal codes.⁹⁶ In the newly acquired provinces, Siam behaved similarly to how the British or French did, enforcing its modern law there.⁹⁷

The westernization of Siam's legal code was only part of Chulalongkorn's larger judicial reforms. Prior to the reform, the judiciary was considered part of the administrative function. Each department had its own court which it regarded as a good source of income.⁹⁸ Moreover, jurisdictions often overlapped with one another.⁹⁹ Also, in provinces, the backlog was huge.¹⁰⁰ Dissatisfied parties would try to appeal decisions to the king. In 1894, the judicial function was

⁹² Engel, *Law and Kingship* 12.

⁹³ See Loos, *Subject Siam* 47-71; for detailed account, see Kanaphon Chanhom, *วิเคราะห์กฎหมายลักษณะอาญา ร.ศ. 127: ศึกษากระบวนการร่างกฎหมายและประเด็นความรับผิดชอบในทางอาญา [The Penal Code of Siam R.S. 127: A Study of The Legal Drafting Process and Criminal Responsibility]* (LL.M. Thesis, Faculty of Law, Chulalongkorn University, 2002) 91-124.

⁹⁴ Walter E. J. Tips, *Gustav Rolin-Jaequemyns and the Making of Modern Siam* (White Lotus 1996) 238-240.

⁹⁵ Darling, *The Evolution of Law* 209.

⁹⁶ See Vickery, *Thai Regional Elites*.

⁹⁷ See David M. Engel, 'Rights as Wrongs: Legality and Sacrality in Thailand' (2015) 39 *Asian Studies Review* 38, 45-47.

⁹⁸ Engel, *Law and Kingship* 60.

⁹⁹ *Ibid*, 60-61.

¹⁰⁰ Tips, *Gustav Rolin-Jaequemyns* 247.

then reassigned to the Court of Justice which came under the new Ministry of Justice.¹⁰¹ The Supreme Court was established in 1908 as the final arbiter so no one could appeal any longer to the king. Judicial staff comprised professional lawyers trained and tested for the job. This new system was shouldered by King Chulalongkorn's son, Prince Ratchburi.

Prince Ratchburi was sent to study law in the UK.¹⁰² Upon his return, he was then appointed Minister of Justice. He also founded the first western-style law school where he lectured, wrote textbooks, and examined students who would later become judges and attorneys.¹⁰³ Thus, a law school had been created to produce professional lawyers. The young prince offered a radical understanding of law and justice as he warned his students not to confuse law with justice, which was then very much a new concept. For him, law could only come by way of an order from the sovereign regardless of morality.¹⁰⁴ His positivistic teaching contrasted sharply with the religious view of the old regime. It is unclear how successful his radical view was received. However, later, more Thais were sent abroad to the west: the UK and the Continental Europe, to study law. Indeed, Prince Ratchburi's half-brother, Vajiravuth, graduated in law from Oxford as well as authoring several books on international law.¹⁰⁵

The third wave of modernization came in 1932, when the People's Party, the progressive revolutionists, ended the absolute monarchy and introduced democracy to Siam. A written constitution formally replaced the traditional political order with democratic liberal ideals. Gone was the era of the king as law-maker. Although permanent democratic consolidation never happened, at least, parliamentary legislative procedure was installed. A law became a law when approved by the Parliament where representatives of the people convened. The democratic protocol further steered away the traditional notion of law.

E. Buddhism and Law in Contemporary Thailand

¹⁰¹ *Ibid*, 248; Engel, *Law and Kingship* 66-69.

¹⁰² Nikorn Tassar, พระเจ้าบรมวงศ์เธอ พระองค์เจ้ารพีพัฒนศักดิ์ กรมหลวงราชบุรีดิเรกฤทธิ์: พระบิดาแห่งกฎหมายไทย [Prince Rapi Phatthanasak, Prince of Ratchaburi: Father of Thai Law] (Nanmee Books, 2006) 86.

¹⁰³ *Ibid*, 107-110.

¹⁰⁴ Thanin Kraivixien, กฎหมายกับความยุติธรรม [*Law and Justice*] (Office of the Court of Justice, 2004) 10.

¹⁰⁵ Vachiravuth, กฎหมายทะเล (จากสมุทรสาร) [*Law of the Sea (From Samutara Sarn)*] (Faculty of Law Chulalongkorn University 2009).

At first glance, there appears to be no Buddhist influence. The eras of dhammasastra and the vinaya legal culture have long passed. Civil and criminal codes contain lists that differ vastly from the ancient lists in the Three Seal Code, which is now solely an object of antiquity studied by historians. Vinaya legal culture is confined to within the monastery, and modern-day lawyers go to law schools, not monasteries. Yet closer examination reveals that one set of rules is still in operation in this Buddhist-majority country — the eternal law of dhamma. The question is whether Buddhism still plays any role in the modern world of law. Is Buddhist legal thought entirely a relic of the past?

(a) Public Perception of Law

Chulalongkorn's legal reforms presented a conundrum. The Three Seals Code was replaced with modern legal codes and the concept of law upended in Thailand. Prior to the reform, the law was the derivative of the higher norm of dhamma. The dhammic origin makes the ancient law sacred, eternal, and constant. At least, in principle, no one was authorised to make any change. On the contrary, post-reform law is understood as an order of the sovereign, legislated according to a prescribed procedure.¹⁰⁶ Hence, law is man-made and its content is not a temporal imitation of Buddhist truth but a response, prepared by experts, to political, economic, or social need at a certain moment. However, the positive law is far more efficient than the ancient sacred law. Mysteriousness was part of dhammasastra's legitimation so only a few people gained access to it. By contrast, modern positive law is publicly accessible in the Royal Gazette. Its sanctions come from legal sanctions, e.g. imprisonment and fine, and not kamma. Furthermore, it is enforceable by professional judges who are systematically trained in the western legal tradition. Buddhists are compelled to address the efficiency conundrum if the Buddhist legal tradition is to be continued into the modern world.

Although the Three Seals Code has been replaced by modern legal codes, the idea of dhamma as higher law has not. On one hand, modern law offers legal certainty, and it is a written rule accessible by the public. Changes are known in advance and stakeholders may voice their concerns in the process. On the other hand, western law has no religious aura; it is simply the will of the ruler and it can be changed at will. Therefore, it is artificial. The history, that such

¹⁰⁶ See Yud Saeng-Uthai, *ความรู้เบื้องต้นเกี่ยวกับกฎหมายทั่วไป* [*General Introduction to Jurisprudence*] (15th edn, Yud Saeng-Uthai Foundation, 2002) 45-64.

law was transplanted into Thailand, makes it alien where the law is supposed to conform to the much higher law of dhamma. While the legal texts are borrowed from the Western legal tradition, the objective of that law and the manner of how it is used are influenced by Buddhism. In other words, the Thai legal system can be perceived as Western hardware with Buddhist software.

While the Buddhist world understands ‘law’ as referring to four different rules, only dhamma is the true law. The other three are man-made and therefore naturally inferior to dhamma. It is more difficult to say if vinaya or dhammasastra has a higher position in the hierarchy than others. Vinaya was promulgated by Buddha, but it was clearly incomplete. A king may override or alter it as he pleases. Although Theravada Buddhists are obsessed with vinaya, by the twenty-first century CE vinaya has become so obsolete that many aspects are no longer compatible with modern life. Dhammasastra, by contrast, is considered sacred. It is not legislated but discovered by a sage with celestial power so it cannot be amended and it is assumed that deities help enforce the law. However, dhammasastra could not withstand the pressure of modernization and gave way to modern law. By this standard, despite its efficiency, modern law functions with the lowest hierarchy. Prince Ratchburi’s positivistic approach to law never became firmly established in the Thai legal consciousness.

The notion of the superiority of dhamma over law is clearly reflected in the work of P. A. Payutto, such as ‘Buddhist jurisprudence’, and he is considered to be the leading authority on the topic of Buddhism and law. He attacks western law as lacking the wisdom to fully understand human nature, and so it will never lead to an ideal life.¹⁰⁷ The concept of a person as a right holder is individualistic so it can only teach people selfishness.¹⁰⁸ It emphasizes consumerism which is the wrong goal in life. He predictably sees a law as a symptom of social illness.¹⁰⁹ The more laws there are, the worse the society has become.¹¹⁰ His conclusion is that, by adopting Buddha’s dhamma, one will no longer need law. Buddhist precepts are superior, finer, and more nuanced; better to build a perfect society, peaceful and harmonious.¹¹¹ Thus, Payutto is asserting the claim of Buddhist superiority over positive law and urging positive law to imitate the right social order.

¹⁰⁷ Payutto, *Buddhist-style Juridical Science* 46-47, 63-64, & 91-94.

¹⁰⁸ *Ibid*, 86.

¹⁰⁹ *Ibid*, 79-82.

¹¹⁰ *Ibid*, 128-130.

¹¹¹ *Ibid*, 72-79.

Payutto's animosity toward western law reveals Thailand's ambivalence about modernization. On the one hand, Thailand is proud of itself for being able to adapt in time and manage to safeguard its independence.¹¹² The modern legal system is particularly the beacon of that pride. The legal code manifested Siam's civilization so it later retrieved the lost judicial power from an unfair treaty.¹¹³ On the other hand, Thais are taught that the experience is bitter and painful. The royalist-nationalistic narrative tells of threats that Siam has faced.¹¹⁴ Involuntarily, it severs ties with centuries-old customs and traditions, precious heritage, and was forced upon modern law. Surely no one misses the ancient law of caning and other ordeals. Still, it convinces many Thais that a western transplant is in general foreign and, therefore, incompatible.¹¹⁵

Much evidence abounds on how dhamma has captured positive law. The inferiority of positive law to dhamma is confirmed by an oft-cited speech by a man of the highest merit, King Bhumibol. The king had long taken justice seriously. He had visited many courts and even heard actual trials as an honorary judge.¹¹⁶ Supreme court judges were appointed his Privy Council, the private advisors.¹¹⁷ Most importantly, he gave audience to all new judges before they commenced their judgeship. King Bhumibol always reminded newly-graduated barristers that law (*kod-mai*) and justice (*kwam-yui-tham*) were two different things. The former may or may not lead to the latter so he encouraged young lawyers to use law for justice.¹¹⁸ He explained that the law is only a tool and justice has wider meaning than law; it extends to morality.¹¹⁹ Here the certainty of the written law is compromised by subjective morality or natural justice. This idea has been widely received and eventually adopted at the constitutional level. The 2007 Constitution, for the first time, mandated that, under the king's signature, the

¹¹² Thongchai, *The Face of Royalist Nationalism* 25-28.

¹¹³ For example, see Praphan Koonmee, 'เสียอธิปไตยทางศาล ก็คือเสียอธิปไตยเหนือดินแดน' [To Lost Judicial Sovereignty is to Lose Territorial Sovereignty] *Manager Online* (20 January 2011) at <<https://mgronline.com/daily/detail/9540000008363>> accessed 1 April 2019. The context is that seven Thais were arrested and tried in Cambodia for trespassing amidst the border dispute in 2008-2014.

¹¹⁴ Thongchai, *The Face of Royalist Nationalism* 46-53.

¹¹⁵ This question is the key to the ongoing debate regarding democracy in Thailand. But it could also be seen as a pretext to justify authoritarianism.

¹¹⁶ 'สถาบันพระมหากษัตริย์กับศาลยุติธรรม' [Monarchy and the Court of Justice] *High Court* (The Supreme Court of Justice Newsletter, special edition, 2016) 4-13.

¹¹⁷ Paul Handley, 'Princes, Politicians, Bureaucrats, Generals: The Evolution of the Privy Council under the Constitutional Monarchy' (A paper for the 10th International Conference on Thai Studies, Thammasat University, Bangkok, 9-11 January, 2008).

¹¹⁸ King Bhumibol's speech to inaugurate new judges on 29 October 2524.

¹¹⁹ *Ibid.*

judiciary must decide cases according to justice, the constitution, and laws.¹²⁰ Also, judges must be independent in deciding cases correctly, timely, and fairly.¹²¹ The order of wording in this conservative constitution suggests that justice (*kwam-yuti-tham*) came before even the constitution, the highest order of the written law. However, the justice clause was later dropped from the 2017 Constitution, although the fairness clause remained.¹²² Unfortunately, no reason for the removal has been given.

(b) Rule of Law vs. Nititham

Another case of dhamma's superiority over law is the rise of *nititham*. Nititham is a Thai translation of the term 'rule of law' but, despite the origin from the western legal tradition, nititham has been localized and has built its own peculiar meaning as a response to the local context.

Nititham is the dhamma of law, or the law of laws. The idea of the rule of law was introduced into Thai legal consciousness as early as after the Second World War. Often, credit was given to A.V. Dicey's idea as the origin of the Thai rule of law.¹²³ Lawyers began proposing that the concept was vital to building a proper democracy; that the use of law must be governed by higher, inviolable, principles. There was broad consensus that these principles were, at least, (1) judicial independence, (2) the supremacy of law, and (3) guarantee of rights and liberties. However, nititham's success was very limited. After WWII, Thailand had been under authoritarian regimes most of the time, which hindered the proliferation of nititham. At best, only a few court cases on unlawful detention could claim to be evidence of the rule of law but there was no further review of the undemocratic governments. It was not until the attempt of the 1997 Political Reform to establish democracy that nititham entered into the wider public consciousness. There it competed with other similar notions i.e. *nitirat* (rechtsstaat) and *thammaphiban* (good governance). Only the terms with *tham* (dhamma) were adopted into law. Nititham prevailed when the 2007 Constitution adopted the term. It mandated that, for the first

¹²⁰ Constitution of Thailand B.E. 2550 (2007), art 197 para 1.

¹²¹ *Ibid*, art 197 para 2.

¹²² Constitution of Thailand B.E. 2560 (2017), art 188.

¹²³ For example, Sanoh Ekkapoj, 'The Rule of Law' in Eakaboon, *Nitirat Nititham* 9.

time, all state apparatus must act according to nititham (the rule of law).¹²⁴ Thammaphiban was translated into a good governance decree that later became a parliamentary act.¹²⁵

How did Buddhism creep into the secular rule of law? One of the key contributors was Thanin Kraivixien, the royalist conservative judge and privy councillor. His reputation for honesty and integrity made him the voice of morality for the Thai legal community.¹²⁶ Trained as an English barrister, Thanin was able to indigenize the western concept to fit the local context. He is a regular speaker to judges on judicial morality where he repeats the importance of dhamma. Indeed, he was the first who coined the term *nitithammavinaya*, which was later shortened. Concerning nititham, he argued that the Buddhist equivalent, the kingly virtue of uprightness (*avirodhana*), is superior to the original western concept because even in times of emergency when national security trumps the rule of law, *avirodhana* still requires a ruler to always act rightly.¹²⁷ Thanin supported his argument by quoting Bhumibol's speech that lawyers must be courageous to serve rightly, both by law and morality.¹²⁸ He recommended the government promote the rule of law by educating government agencies about *hiri-otappa* (shame over moral transgression) and the law of kamma.¹²⁹ According to Thanin, the 2007 drafters chose nititham because Thais are more familiar with *tham*.¹³⁰ His view has become a standard guideline.

Another leading advocate of nititham is a French-educated scholar and constitution drafter, Borwornsak Uwanno. As a response to the 2007 Constitution, he explained nititham in terms of the supremacy of law, judicial independence, equality, rights and liberties, and procedural fairness.¹³¹ However, in 2016, while he still suggested that Thailand needed a better rule of law: supremacy of law, natural justice, and separation of power,¹³² Borwornsak ultimately concluded that the rule of law concerns only the outward aspect, of form, behaviour, and

¹²⁴ 2007 Constitution, art 3.

¹²⁵ The Good Governance Act B.E. 2546 (2003).

¹²⁶ It is interesting that, when Thanin was appointed a prime minister, his regime was so brutal and repressive that the conservative quickly ousted him in the 1977 coup. Wyatt, *Thailand* 293.

¹²⁷ Thanin Kraivixien, *หลักนิติธรรม [Rule of Law]* (2nd edn, Office of Civil Service Commission 2009) 9-10 & 28-29.

¹²⁸ *Ibid*, 38-39.

¹²⁹ *Ibid*, 48.

¹³⁰ *Ibid*, 18.

¹³¹ Borwornsak Uwanno, 'หลักนิติธรรมกับการปกครองในระบอบประชาธิปไตย' [Rule of Law and Democracy] *Rabhi Memorial '51* (Thai Bar Association 2008) 30-33.

¹³² Borwornsak Uwanno, 'หลักนิติธรรม ประชาธิปไตย และธรรมาธิปไตย' [Rule of Law, Democracy, and Dhammacracy] (Individual Study Paper, The Rule of Law and Democracy Course, The Constitutional Court, 2016) 15-17.

structure.¹³³ He therefore proposes that dhamma must be brought in to fulfil the essence of democracy, ‘dhamma constitutional democracy.’¹³⁴ His ideological change coincided with national politics which intensified and became defined as a good vs. evil moral battle.

Both Thanin and Borwornsak are rightly sceptical of the thin version of democracy, of having a periodic election without democratic culture.¹³⁵ However, the solution, that the law must command the rulers and the ruled to observe dhamma, is, at best, very abstract, and at worst, outright indoctrination, verging into theocracy. Notwithstanding the extremity, their ideas are highly influential. Thanin’s writings are widely circulated among judicial personnel and civil servants. Compared to Thanin, Borwornsak focuses more on structure and law, less on personal virtue. He has been a regular leading figure in drafting Thailand’s many constitutions. Notably, in the 2015 drafting, he actualized his vision by demanding politicians and citizens to be moralistic and observant of their duties. The draft was criticized as ultra-moralistic.¹³⁶

Unfortunately, the consequence of the emergence of nititham is not natural justice but legal confusion, almost an anarchy. Nititham vests in the judiciary almost unlimited power to intervene in the government affairs. The judiciary portrays itself as the protector of democracy. On the one hand, the court, especially, the Constitutional Court, cites nititham to abolish laws that violate an individual’s rights and liberties. On the other, the court aggressively asserts its judicial power over democratically elected governments. It has dissolved major parties and dismissed three prime ministers, together with banning hundreds of other politicians from politics for five-year periods.¹³⁷ It turned down the plan to amend the constitution.¹³⁸ It justified aggressive judicial review by claiming to battle corruption and restore transparency, part of nititham.¹³⁹ Nevertheless, it should be noted that the court has never applied the same standards to authoritarian regimes, both of 2006 and 2014. This put the sanctity of nititham into doubt as nititham is accused of sacrificing the more objective principles such as separation of powers

¹³³ *Ibid*, 30.

¹³⁴ *Ibid*, 68-76.

¹³⁵ See Larry Diamond, *Developing Democracy* (The John Hopkin University Press 1999) 8-17.

¹³⁶ McCargo, *Peopling the 2015 Draft Constitution* 336-341; Khemthong Tonsakulrungruang, ‘Pol-la-muang: The Making of Superior Thais’ *New Mandala* (24 April 2015) at <<http://www.newmandala.org/pol-la-muang-the-making-of-superior-thais/>> accessed 19 April 2019.

¹³⁷ Khemthong Tonsakulrungruang, ‘Thailand: An Abuse of Judicial Review’ in Po Jen Yap (ed) *Judicial Review of Elections in Asia* (Routledge 2016) 177-185.

¹³⁸ Khemthong, *Constitutional Amendment in Thailand* 180-182.

¹³⁹ *Ibid*; Khemthong Tonsakulrungruang, ‘The Constitutional Court of Thailand: From Activism to Arbitrariness’ in Albert H. Y. Chen & Andrew Harding (eds) *Constitutional Courts in Asia: A Comparative Perspective* (Cambridge University Press 2018) 199-212.

and legal certainty for justice, which is more subjective. The Constitutional Court even offers a diploma on nititham and Thai democracy where its judges preach their version of nititham to politicians, businessmen, and civil servants.¹⁴⁰

(c) Professional Ethics and Training

Dhamma provides a guide to a judge's professional as well as personal life. The main question in the judicial profession is how to judge rightly, that his decision delivers justice and fairness, and that failure to do so may bring doom upon the kingdom, according to the ancient belief. Here, the residue from the era of dhammasastra is reiterated by generations of lawyers, that he must avoid the four prejudices (*aggati*), of anger, of love, of ignorance, and of fear that will cloud his judgement.¹⁴¹ In order to be rid of the four prejudices, a judge is advised to practise dhamma, to observe *sila* and meditate.¹⁴² Dhamma becomes the main theme in judicial personnel training. All new judges must undergo month-long training, during which they learn how to proceed with a trial as well as how to behave as a good judge. He must take a dhamma course as well. By learning this old wisdom, a young judge is mentored about deciding on the matter of life and death.

In actuality, death presents the awkward problem of how a Buddhist judge should deal with capital punishment. One answer from a famous Buddhadasa is often quoted; that a judge, if doing his duty without bias, is only the agent of kamma; he is not harming a convict out of his own intention so he is not implicated in the cycle of cause and effect, of harm and revenge.¹⁴³ By invoking an exception on the state of mind, this is a clever compromise with the principle of non-violence that Buddhism holds dear. The view is widely accepted by the judiciary. This shows how the Thai judiciary picks some versions of dhamma to overcome moral problems.

¹⁴⁰ Björn Dressel & Khemthong Tonsakulrungruang, 'Coloured Judgements? The Work of the Thai Constitutional Court, 1998–2016' (2018) 49 *Journal of Contemporary Asia* 1, 12-16.

¹⁴¹ For example, Treewut Sakhakorn, *ธรรมะของตุลาการ* (Dhamma for Judges) 12-14 at <http://elib.coj.go.th/Article/c2535_7_3_3.pdf>; Kajorn Havanond, *จริยบรรณคดีตุลาการ* [Judicial Ethics] (1985) 32 Dullapah 2.

¹⁴² Buddhadasa, 'ตุลาการตามอุดมคติแห่งพระพุทธศาสนา' [Judges According to Buddhist Ideal] *Rabhi Memorial* 54 (Thai Bar Association 2011) 39.

¹⁴³ Buddhadasa as quoted in Sitthichai Leelasopht, *ผู้พิพากษาสั่งประหารชีวิตเป็นบาปหรือไม่* [Did a Judge Commit a Sin When Ordering Execution?] (2010) 4 *Justice Review* 48, 56-57.

Buddhadasa played a key role in connecting a judge to dhamma. He was a good friend of Sanya Thammasak, another President of the Supreme Court (1963-1967). Sanya invited Buddhadasa to speak to young judges or take them to visit the monk at his temple, where he reminded judges to serve rightly by observing dhamma.¹⁴⁴

Dhamma also provides guidance for a judge's life outside the courtroom. In the Code of Judicial Conduct, a judge must 'behave morally, live in solitude, live a simple life, be polite, have good manners, be amicable, and also behave in a trustworthy way to the general public.'¹⁴⁵ Interestingly, in a training handbook, while behaving morally is said to not follow any particular religion, living in solitude is elaborated by teaching from the Sangha Raja. Solitude means สันโดษ in Buddhism which is explained as being that an ideal judge must be content with what he honestly earns.¹⁴⁶ Moreover, he must be humble and frugal.¹⁴⁷ A judge must stay clear from worldly temptation (อนาฆมุข).¹⁴⁸ Strikingly, the ideal life of a judge is an ascetic one resembling that of a monk. This similarity is confirmed by several role models of judges, including Thanin Kraivixien, whose biographies display many Buddhist virtues.¹⁴⁹ Thus, it seems as if religiosity, not professionalism, is what defines the judicial career.

(d) Kamma and Law

Of all dhamma, kamma is one of the most powerful and best-known concepts for laypeople. Buddha teaches that any deed, good or bad, triggers consequences, perhaps within this life or next. Those who escape temporal law can never escape the true karmic law. Tipitaka told the story of *Angulimala*, a fearsome bandit who killed 999 victims and made a garland from their fingers.¹⁵⁰ Buddha succeeded in showing him the right way so he abandoned his wicked ways and was ordained. Shortly afterwards, he became arahat and the king agreed to drop all charges against him. Nevertheless, Angulimala the arahat still suffered a great deal when angry villagers beat him with sticks and stones, which Buddha explained to him was the consequence

¹⁴⁴ Buddhadasa, *Dictatorial Dhammic Socialism*; Pinyapan, *Thai-pitaka* 309-314.

¹⁴⁵ The Judicial Code of Ethics, sec 35.

¹⁴⁶ ประมวลจริยธรรมข้าราชการตุลาการ [*The Judicial Code of Ethics*] (Office of the Court of Justice 2009) 82-85.

¹⁴⁷ *Ibid*, 85.

¹⁴⁸ Duncan McCargo, 'Reading on Thai Justice: A Review Essay' (2015) 39 *Asian Studies Review* 23, 28-29.

¹⁴⁹ Kitpatchara Somanawat, 'Constructing the Identity of the Thai Judge: Virtues, Status, and Power' (2018) 5 *Asian Journal of Law and Society* 91.

¹⁵⁰ *Āṅgulimālasuttam*, Tipitaka Volume 13 : Sutta Pitaka Vol 5 : Sutta. Ma. Ma.

of his bad kamma ripening.¹⁵¹ The story is remarkable not only at showing how kamma works but also at how insignificant the king's law is. Interestingly Buddha did not discuss how the victims and their families would cope with their loss. There was neither revenge nor reparation, only personal salvation.

In the case of Thailand, the work of David Engel introduces readers to the legal consciousness of rural Northern Thailand where customary justice remains in existence. Injury is explained in terms of kamma so people still sometimes prefer traditional dispute settlement, a mediation by respected figures, to a modern justice system which is imposed upon them from the central authority.¹⁵² Justice is entertained through mutual agreement. Compensation is relative and might not be able to fully cover the whole damage. However, Engel limits his study to the rural north. He is convinced that traditional ideas of justice are being usurped by more modern ones, implying a different, western, understanding of justice in more urban areas.¹⁵³ However, there is plausible to imagine that a similar idea exists even in the city and among more educated classes.

Given the widespread belief in kamma and their training background, there is little wonder that kamma discourse makes its way into the courtroom. Judges adopt a similar narrative to explain injury to the parties and convince them to settle disputes with partial compensation before going to full trial.¹⁵⁴ It is not clear if an incumbent judge genuinely believes in his reasoning or he just uses it as a pretext to avoid a burdensome task. In one famous, and highly politicized case, the Military Court acquitted Phra Pimoltham, a senior abbot who was wrongly accused of being a communist to thwart his rise to the Sangha Raja position. In its closing remarks, the court reminded Phra Pimoltham that the legal façade was no one's fault but the result of his own kamma and that he should embrace it without anger.¹⁵⁵ Similar conversations sometimes happen in more ordinary cases too although their frequency is unknown. An accused also employs kamma to his or her advantage. Some become ordained to show remorse so they can

¹⁵¹ Hellmuth Hecker, *Angulimala: A Murderer's Road to Sainthood* (Buddhist Publication Society 1984) 9.

¹⁵² Engel, *Rights as Wrongs* 39-41 & 47-48.

¹⁵³ David Engel & Jaruwan Engel, *Tort, Custom, and Kamma: Globalization and Legal Consciousness in Thailand* (Stanford University Press 2010) 153-161.

¹⁵⁴ Personal Communication from the author to Luckpong Jantara, Junior Judge to Petchabun Provincial Court (5 August 2019).

¹⁵⁵ Rome Bunnag, “กรรมตามทันทุกราย! เรื่องสลดใจที่สุดของวงการสงฆ์ สุดช็อคคำพิพากษาโดยศาลทหาร!!!” [Kamma Always Find You! The Most Upsetting Story from the Sangha, The Worst Military Court's Decision] *Manager Online* (23 March 2016) at <<https://mgronline.com/online/section/detail/9590000030059>> accessed 1 April 2019.

ask for leniency in sentencing. Whether the tactic is actually successful remains to be found out. There has yet to be a systematic empirical study of the role of Buddhism, especially kamma, in the courtroom, but Buddhism is evidently there.

Kamma help explains both the cause and effect of the wrongs people encounter in life. Injury is the consequence of bad kamma, perhaps even from a previous life. Kamma will always punish a villain even when he escapes the hand of temporal justice. This belief is exacerbated by socio-economic reasons; that the modern law is difficult to understand and costly to use; most importantly, it often fails if a suspect has political connections. It is not uncommon to see comments on a suspect who is perceived as escaping justice, that kamma will befall him.

F. Conclusion

An absence of a written Buddhist code of law may suggest that Buddhism no longer has any connection with the current law of Thailand. However, that view is too simplistic. Thai legal consciousness has never broken away from religion. On the other hand, Buddhism has also never produced a revolution similar to the Papal Revolution in the eleventh and twelfth Century CE Europe when Pope Gregory VII established the new tradition of canon law and proper legal study. Buddhist law does not come in the form of written law. Dhammasastra is gone. Yet Buddhist legal thought, especially that of dhamma's superiority, is in training materials and commentaries as well as ingrained in the popular perception of what the ideal law is. The Buddhist law of dhamma is the ultimate governing rule of how legislators and judges should correctly understand and use the law. On the bright side, this provides Thai lawyers a guiding star in the profession that often deals with morally challenging questions, instructing lawyers on how to deliver justice. The downside is that it can lead to a more arbitrary and vague legal system.

The relationship between Buddhism and modern positive law has yet to be fully explored. The above section is just an initial attempt to probe into an area rarely ventured into by most lawyers. For example, there are many other statutes, in addition to the constitution and the sangha law, which are influenced by Buddhist morality. At least in three policies, Buddhist rationale overrides economic advantage or political reasons: alcohol, gambling, and abortion. The three activities are heavily regulated or banned, yet very popular or at least, common.

Several governments have contemplated plans to de-criminalize abortion and legalize casinos, but have withdrawn the projects after protests. While alcohol is not outlawed, its sale and advertisement are regulated. Alcohol advertisements must not be too enticing. Alcohol cannot be sold on Buddhist holidays. When Thai Bev was about to enter the stock market, Buddhists protested so the company moved to Singapore's stock market. This area definitely merits more attention.

Beyond the different historical roots, Buddhist and modern laws are built upon very different premises. The next chapter will explore this foundational difference further by questioning Buddhist thinking about the idea of natural rights.

VIII. Traditional Buddhist Constitutionalism: Theories of Natural Rights

The question of human rights is at the forefront of current debate on Buddhist ethics. Although the concept of rights is relatively new, most people nowadays tend to think of their legal relationship with the authorities from the perspective of rights; the state is constrained in its treatment of citizens by their inherent, universal, and inalienable rights.¹ This is how people understand how rules and public institutions work. Since the spread of the idea of universal human rights far and wide after WWII, it has come to stand for the basic standard of treatment of human beings. Human rights are regarded as being natural and inalienable for every individual. Within a short period, the concept has gained acceptance as the common language of modern constitutionalism.

In an age when human rights have become a universal norm, Buddhism attempts to play along. Prominent Buddhist leaders insist on the compatibility of the two, that Buddhism can co-exist with human rights. Leaders claim to adopt the Buddhist way of fighting against human rights violations. Aung San Sui Kyi, for example, rejects the Asian Values argument which questions the compatibility of the western-inspired concept in the East Asian context.² Against the atrocities committed by the military junta, Sui Kyi sees the goal of Buddhism, of peace, toleration, and respect for human life, concurring with that of human rights, in other words, human dignity, quality of life, and development of the world. The Dalai Lama invokes the language of human rights to call for support from Tibetans and the world community against oppression by the Chinese government.³ Post-Khmer Rouge Cambodia is reported to employ similar Buddhist ideas to teach citizens the value of human rights.⁴ However, despite making regular references to the shared goal, these Buddhist leaders do not clearly demonstrate how Buddhist ethics can accommodate human rights. This weakness might contribute to many human rights violations in the region. As Keyes has shown, leaders of Sri Lanka, Myanmar, and Thailand have constantly ignored human rights and targeted non-Buddhist minorities in the name of Buddhism.⁵ Khmer Rouge had promised social nirvana to Cambodians but delivered a human rights catastrophe.⁶ Even Aung San Sui Kyi has lately been condemned for

¹ Julian Rivers, "The Virtue of Rights" (2000) 13 *Studies in Christian Ethics* 67, 67-70.

² King, *Buddhism and Human Rights* 105-106.

³ *Ibid.*, 106.

⁴ *Ibid.*, 104-105.

⁵ Keyes, *Buddhism, Human Rights, and Non-Buddhist Minorities* 163-176.

⁶ *Ibid.*, 169-170.

her endorsement of Buddhist extremists' genocidal campaign against Rohingya Muslims. These violations suggest that, deeper below the universalistic rhetoric, Buddhism, especially Theravada, contains elements which could be used against as well as for human rights. Buddhism is still struggling to reconcile a huge philosophical gap between the two ideas. This chapter thus asks how prevalent is the human rights language embedded in Thai Buddhism? More importantly, what role does it actually play in practice?

In Thailand, the transition from a traditional concept of law to a rights-based one occurred as recently as two decades ago. It is true that the idea of human rights in Siam had its origins as early as the late nineteenth century CE among more progressive aristocrats. For example, King Mongkut prohibited the sale of a wife and children to slavery, complaining that such practice discriminated against women, and King Chulalongkorn abolished slavery and corvée labour entirely in 1905.⁷ However, it was only in 1932, when the People's Party revolted against the absolute monarchy, that the political and civil rights of Thais were officially recognized in a constitution.⁸ Still, little had changed in people's perceptions of law and rights. One limiting factor was that Thailand was still under some form of authoritarian rule up until the 1990s. When the student activists and union leaders demanded rights and liberties in the 1970s, the military dictatorship quickly and violently crushed the budding attempt. Yet in 1992, an emerging middle class finally rose against the military dictatorship of General Suchinda Kra-Prayoon. Against the background of political liberalisation, people suddenly became aware of their human rights, which became ingrained into everyday language.⁹ The 1997 Constitution further promoted this transformation by recognizing a long list of rights for Thai citizens and creating several bodies, the Constitutional Court, the Administrative Court, the Ombudsman, and the National Human Rights Commission, for example, to enforce them.¹⁰ Individuals and civil society organisations invoked their rights to question the government. Although the 1997 democratization was later ended by the 2006 and 2014 coups, human rights have become firmly established in the mind of the public. At the very least, it is still fuelling

⁷ Andrew Harding & Peter Leyland, *The Constitutional System of Thailand: A Contextual Analysis* (Hart Publishing 2010) 219-220.

⁸ *Ibid.*, 220; Thai Constitution B.E. 2475 (1932), art 12-15.

⁹ *Ibid.*, 222-226. See Borwornsak Uwanno, คำอธิบายวิชากฎหมายรัฐธรรมนูญ [*Explanation of Constitutional Law*] (Thai Bar Association, 2010) 41-52.

¹⁰ *Ibid.*, 43; Harding & Leyland, *The Constitutional System of Thailand* 226-229.

today's resistance against the military government of Prayuth Chan-Ocha. At the same time, the 2006 and 2014 coups are reminders that old anti-rights ideas also remain strong.¹¹

There is a fundamental problem in the debate on Buddhism and human rights; that, due to the novelty of the concept, there is no canonical source on this issue. Buddha never taught about rights, so Buddhism makes no explicit mention of the issue in the canon. Although this absence is unsurprising, as all major religions originate in ancient times much earlier than the proliferation of human rights, it poses a problem for studying Buddhist legal ethics. The debate is left to contemporary thinkers, and materials are scant. The problem is acute in the Theravada tradition, the conservative orientation of which limits a more creative approach to the topic. The absence of canonical reference also presents another problem. Unlike political order or law, about the essence of which Buddhists hold a broad consensus, the understanding of human rights is less homogenous. The narrative of human rights in Thai Buddhism is less coherent than that of political and legal order.

This chapter examines the Buddhist theory of human rights through three perspectives: content, concept, and ideology. It asks what Buddhism and human rights have in common, and, more importantly, how they differ. Then, it probes how the Buddhist theory of human rights plays out in practice.

A. Content of Human Rights in Buddhist Teaching

One of the easiest, and also crudest, ways to prove Buddhism's compatibility with the concept of human rights is to match each specific right to the content of Buddhist teaching. Often the object for comparison is the Universal Declaration of Human Rights (UDHR). L. P. M. Perera is one of the earliest to pioneer the approach of matching each article from the UDHR with Buddhist teachings.¹² His work is circulated only among a narrow band of scholars so this oft-mentioned scholarship is not easily available. Luckily, a similar means of matching was repeated by Hoffman, who relied principally on Perera's work and other supplementary

¹¹ For example, see Wolfram Schaffar, "New Social Media and Politics in Thailand: The Emergence of Fascist Vigilante Groups on Facebook" (2016) 9 *Austrian Journal of South-East Asia* 215.

¹² L. P. N. Perera, *Buddhism and Human Rights* (Karunaratne 1991) cited by Frank J. Hoffman, 'Buddhism and Human Rights' (2001) 2 *Contemporary Buddhism* 139.

sources, allowing a wider audience to learn about Buddhism's pairing with the content of the UDHR.

Perera and Hoffman's choice of source is random. Only a few rights are directly supported by the canonical source: the first precept of non-killing is linked to the right to life (art 3): the Great Elect King is linked to the democratic model and the right to participation (art 21): and the Wheel-Turning Monarch to the right to welfare (art 25). The right to ownership of property is more disputed; while Buddhism prohibits stealing, the sangha community believes in collective, not private, ownership.¹³ Perera and Hoffman cite the monastic code of conduct and disciplinary procedure as the model for the rights to justice (arts 8, 10, and 11). As the matching continues, the two scholars increasingly use more distant, less relevant references. Mostly, they refer to the general spirit of loving-compassion, non-injury, or non-discrimination against the caste system, for example, in support of the right against torture (art 5), the right against arbitrary detention (art 9), or the right to family (art 16). Others are even more far-fetched. Freedom of religion and expression are said to be compatible with Buddhism's spirit as Buddha demonstrated by manifesting his enlightenment to the public.¹⁴ The Dalai Lama's escape from Tibet is portrayed as the right to asylum.¹⁵ Finally, some rights are just unmatchable, i.e. the right to the presumption of innocence, privacy, and nationality (arts 11, 12, and 15). It is doubtful if their subjective interpretation of Buddhism is acceptable or accurate, for example, reading Buddha's act of manifesting his enlightenment as the evidence in support of the right to manifest religious belief, or seeing the Great Elect King model as a democratic and participatory form of government.

The weakness in their methodology is that there seems to be no systematic way to fulfil the task they have set themselves. Perera and Hoffman draw matchings from various sources: the Tipitaka canon of dhamma and vinaya, commentaries, Buddha's life story, and even contemporary incidents. Perera and Hoffman's order of selection is very random. Only a few rights are referenced to Tipitaka. Their choices of sources indicate that Buddhism did not originally envision such ideas. More importantly, these sources carry varying degrees of authority. Tipitaka is considered the most authoritative, and then the commentaries. Buddha's life story, the general spirit, and contemporary incidents carry dubious weight. However, to

¹³ *Ibid*, 145.

¹⁴ *Ibid*.

¹⁵ *Ibid*, 144.

complicate the matter, most Thais are least familiar with the canon compared with the life story or the general idea of Buddhism. Contemporary incidents, especially from another branch of Buddhism, should not be considered acceptable sources for Theravada at all. While the UDHR proceeds from the first to second, and eventually third generation of rights in an orderly manner without discriminating between each right, Perera and Hoffman picked their matching sources in a very random and questionable manner. In sum, their efforts to match the UDHR with Buddhist ethics are rather tendentious.

Furthermore, the problem is such tendentiousness is exacerbated by the lack of consensus among Buddhists. There seems to be little consensus on what matches with what. Other works by Thai scholars which offer alternative matchings demonstrate how variable this exercise can become. Theirs are less thorough and even more confusing. Most would agree that the right to life, and the right to property, match the first precept of not killing, and the second precept of not stealing, respectively.¹⁶ That is where the consensus ends. Most would not consider vinaya to be a model justice system or the sangha the ideal democratic society. Some work simply refers to the general idea of loving-kindness (*metta*) to encompass all kinds of human rights while others liken Buddha's fair treatment of individuals to the idea of equality and human dignity.¹⁷ These interpretations stretch too far. Besides, it is questionable if such interpretations represent the majority view of Thai Buddhism as they rely on less familiar canonical passages. At best, many Thai scholars insist that Buddhism's spirit is generally supplemented with that of human rights.¹⁸ They would offer a list of basic dhamma which they claim to support or encourage human rights, but they do not pinpoint the exact passage.

One Thai who adamantly argues that Buddhism already contains human rights is Sulak Sivaraksa, a well-known Thai Buddhist thinker and a radical conservative. Sulak sees human rights as indigenous to traditional Thai society and later corrupted by Western ideas.¹⁹ He

¹⁶ See Phra Sommai Atthasiddho (Putsing), *ศึกษาสิทธิมนุษยชนในพระพุทธศาสนา [Study of Human Rights in Buddhism]* (Individual Study, Mahachulalongkornrajavidyalaya University 2014) 35-36.

¹⁷ *Ibid*, 37-38; Ormsin Chivapruksa, 'หลักสิทธิมนุษยชนในพระพุทธศาสนา' [Principles of Human Rights in Buddhism] (Individual Study, the Rule of Law and Democracy Course, The Constitutional Court, 2016) 12-13.

¹⁸ In addition to the above reference, see Phra Kru Patumkantarakorn (Buntan Maliong), *หลักธรรมในพระพุทธศาสนาเอื้อต่อการส่งเสริมสิทธิมนุษยชน* [The Doctrine in Theravada Buddhism and Human Rights Promotion] (MA Thesis on Buddhist Studies, Mahachulalongkornrajavidyalaya University 2011).

¹⁹ Soraj Hongladarom, "Buddhism and Human Rights in the Thoughts of Sulak Sivaraksa and Phra Dhammapidok" in Damien V. Keown, Charles S. Prebish, and Wayne R. Husted (eds) *Buddhism and Human Rights* (Curzon 1998) 98.

describes traditional Thai society as tri-partite; the sangha, the people, and the king.²⁰ Sulak imagines a village-based agrarian community where members live according to Buddhist dhamma. He identifies the Five Precepts as the basis of Thai human rights without specifying how. The sangha acts an exemplar of an ethically ideal society where human rights naturally follow goes the line of thinking. The king guides his people to attain ideal ethical standards. The people's duty is to pledge the king their allegiance and the sangha their reverence. If this arrangement functions well, there will not be any human rights violation. However, this structure fell apart with the 1932 democratic revolution that ended absolute monarchy.²¹ Since then, no political leaders have come to replace the role of the public moral exemplar of the king. With no moral enforcers, the arrival of the Western ideas is actually the death knell to indigenous human rights. It is posited that only if Thais return to their true selves can human rights be restored.²² For the academic Sulak, human rights are a consequence of, and dependent upon, following dhamma. Once every member fulfils his responsibility as Buddhism dictates, then there are human rights.

Sulak's theory, however, contains errors. First, his traditional Thai society is an imaginary community. This ideal image of the good old days is disseminated and expressed widely among conservatives without any supporting evidence that Siam had once been as claimed. His theory is reactionary to the consumerism of the modern Thailand, yet such an ideal ethical society has never existed. He admits that there are surely some historic human right violations, slavery for example, but he dismisses them as minor. This view is rejected by more critical observers who acknowledge the systematic exploitation of powerless commons. In addition to slavery, there was tax-farming and corvée labour, as well as other mistreatments.²³ Actual historical evidence reports poverty, desertion, and even rebels against the powerful lords as the result of abusive relationships, which explained why the 1932 Revolution eventually happened.²⁴ Sulak's second mistake is to confuse liberal democracy with military dictatorship. Thailand has never completed democratic consolidation. Royalist conservatives were actually able to seize power back with the help of the military so post-absolute monarchy Thailand has mostly come under

²⁰ *Ibid*, 100.

²¹ *Ibid*, 101.

²² *Ibid*, 102.

²³ See Chit Phumisak, โฉมหน้าศักดินาไทย [*The Real Face of Thai Feudalism*] (10th edn, Sri Panya 2007); Chris Baker & Pasuk Pjongpaichit, *A History of Thailand* (2nd edn, Cambridge University Press 2009) 15-18.

²⁴ See Nakarin, *The Siamese Revolution 1932* especially in chapter 5, also, see the People's Party Manifesto at 307.

military dictatorship.²⁵ It is in this context that Sulak appears to criticize the ‘western’-style of government of corruption and violation of human rights without distinguishing democracy and dictatorship.²⁶ Sulak would prefer traditional small-scale human rights violations to large-scale ones under westernized dictatorships. His subsequent work still shows his categorical disapproval of all things western, even though liberal, and his fondness of returning to an absolute monarchy. This anti-westernization theme keeps recurring throughout the debate on Buddhist values and human rights.

Many Buddhist Thais, Sulak included, adopt a consequentialist approach. Human rights are not necessary if everyone follows dhamma. Two most often cited teachings are the Five Precepts and the Six Dimensions. The Five Precepts or *sila* are the minimum standard of proper conduct for Buddhists. A person should refrain from: (1) taking life, (2) taking property not freely given, (3) sexual misconduct, (4) lying, and (5) intoxication.²⁷ The scope varies. Some would understand lying to include swearing or even talking nonsensically. Some see adultery as misconduct but not premarital sex or polygamy. The five silas form Buddhism’s moral code of conduct. The Six Dimensions designate proper roles in six relationships: to parents, spouses, friends, monks, teachers, and servants.²⁸ Basically, a person must treat people of senior positions i.e. parents, teachers, and monks, with respect and obedience. These are obligated to reciprocate with appropriate caring, upbringing, education, and advice in good faith. Spouses must care for each other with material and emotional support and fidelity. Friends must maintain their friendship. Lastly, those of lower status, a person must treat with compassion and kindness, food and wages, medicine and holidays, so they return the favour with their loyalty and service. For Buddhists, human rights are a natural consequence once they satisfy these dhamma. These definitely help create a peaceful society but, as the matching experiments have shown, the Five Precepts and the Six Dimensions still fall far short of the full coverage of human rights as set out in the UDHR. Adultery and intoxication might be immoral but they breach no human rights. Buddhism’s tolerance of other religions should not be understood exactly as freedom of religion in the modern sense. Nor does the fair treatment of a wife equate

²⁵ See Hewison, *Contestation Over Elections*.

²⁶ Sulak’s understanding of democracy is very complicated. Surapot Taweesak concludes that Sulak believes that there has never been a real democracy in the modern Thailand, see Suraphot Taweesak, ไตรทัศน์วิจารณ์ ความคิดว่าด้วยพุทธศาสนา สถาบันกษัตริย์ และประชาธิปไตยของ ส. สิวรักษ์ [*Critiques on Three Views of Sulak Sivaraksa: Buddhism, Monarchy, and Democracy*] (Kled Thai, 2014) 185-205.

²⁷ Phra Kru Patumkantarakorn 65-72; Phra Sommai Atthasiddho 32-36.

²⁸ Phra Kru Patumkantarakorn 114-118; Phra Sommai Atthasiddho 51-55.

with gender equality. These terms e.g. freedom, dignity, equality of life have a precise meaning defined by historical and political circumstances. The dhammas come from a very different origin; therefore, they yield very different results.

B. The Conceptual Framework of Buddhist Human Rights

The content-based approach is not valuable to the debate on Buddhism and human rights because there are many flaws in making a direct match between the two sets of values which are made in totally different settings. It is perhaps more fruitful to ask if human rights could find a theoretical foundation within Buddhism's vision of individual and social good.²⁹ To understand Buddhist ethics on human rights, the discussion must begin with the concept of rights. What are rights from the perspective of Buddhism? Which characteristic of rights does Buddhism lack or share with the West? The topic is discussed more extensively in the study of classical Buddhism while Thai Buddhist scholars often focus on the topic of human rights. Therefore, only by a reverse engineering technique is one able to deduce Thai Buddhism's understanding of rights.

In the West, the journey of the concept of rights lasts over a millennium. In the ancient world, from Greece to the Middle Ages, right, or *ius*, has the objective meaning of the state of affairs. Through reasoning or God's revelation, what is right is what is the proper state of affairs, legally, politically, and morally.³⁰ Violation of this natural law results in the transgression of the proper order. When Europe entered into the late Middle Ages and eventually the Enlightenment, the notion of rights changed from an objective to a subjective meaning.³¹ Philosophers began to consider rights not as the proper state of affairs but as power of an individual.³² It focused not on the whole community but on a person as an owner of rights. A person naturally owns a right which must be legally enforceable. The notion of natural rights has repeatedly been confirmed through historical events such as the Enlightenment, the American Revolution, and the French Revolution, from which natural rights were made

²⁹ Perry Schmidt-Leukel, 'Buddhism and the Idea of Human Rights: Resonances and Dissonances' (2006) 26 *Buddhist-Christian Studies* 33, 33.

³⁰ Duncan Ivison, *Rights* (Routledge, 2008) 40; Damien Keown, 'Buddhism and Human Rights' in Damien Keown (ed) *Contemporary Buddhist Ethics* (Routledge 2000) 64-65.

³¹ Ivison, *Rights* 40-41. Nigel E. Simmonds, *Central Issues in Jurisprudence* (4th edn, Sweet & Maxwell, 2013) 279-280.

³² Ivison, *Rights* 41. Rivers, *The Virtue of Rights* 69-70.

manifest. After the WWII, such an idea of natural rights became the universal norm known as human rights.

What does rights refer to? There are two main camps in this debate: the will theory and the interest theory.³³ According to the will theory, rights are a form of power. The right-holder has a legitimate power over another individual's action, to compel them to act or forbid them from such action.³⁴ This entitlement pre-empts any further discussion about the usefulness or appropriateness of the invocation of rights.³⁵ This view is simple and straightforward. Yet it reveals very little about why that entitlement should be recognized as a right.³⁶ The interest theory, on the other hand, believes that a right will advance the holder's interest, making one better off.³⁷ Imprecise as it is, the interest theory is useful to explain why a person does not always have total control over their rights. Some rights which confer the most important interests to a person, e.g. the right to life, cannot be waived at will.³⁸ Also, it justifies how an incompetent individual could still enjoy rights even when they are not capable of exercising them by themselves.³⁹ How does a Buddhist ethics of rights position itself between the two camps?

The above debate notwithstanding, a right is largely understood as comprising four basic components as proposed by Wesley Hohfeld.⁴⁰ People use the term "right" according to four different definitions. A right is a liberty so the holder is under no duty to act. He is free to exercise or not exercise that choice. A right confers a claim that the holder can demand others to perform their duty to the right holder. A right holder also enjoys a power to alter his rights e.g. waiving or releasing a duty-bearer from his due. Lastly, a right entails immunity. No other entity has the power to alter his right.

³³ Simmonds, *Central Issues* 326-332.

³⁴ Leif Wenar, "The Nature of Rights" (2005) 33 *Philosophy and Public Affairs* 223, 238-239.

³⁵ Simmonds, *Central Issues* 280-282.

³⁶ See *ibid*, 327.

³⁷ *Ibid*, 282-284. Wenar, *The Nature of Rights* 241.

³⁸ Simmonds, *Central Issues* 333; Wenar, *The Nature of Rights* 239.

³⁹ See this argument at Neil McCormick, "Children's Rights: a Test-Case for Theories of Right" in Neil McCormick (ed), *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford University Press, 1984).

⁴⁰ Simmonds, *Central Issues* 298-302; Wenar, *The Nature of Rights* 224-237.

Damien Keown asks if Buddhism has the concept of right. He admits that Buddhism does not talk about right but argues that it contains similar ideas in different presentation.⁴¹ Keown makes reference to dhamma, which sets the normative relationship of an individual to society. Each individual has a specific set of duties under a specific role, as parent, partner, offspring, master, disciple, etc. Keown translates dhamma, in this context, to due, which offers two meanings.⁴² Dhamma assigns what one is due to deliver as well as what is due to one. Thus, although Buddhism may speak principally of duty, it clearly has the idea of entitlement in mind. According to Keown, when a person must refrain from killing, it implies the right to life of others.⁴³ Dhamma offers a myriad of interpersonal relationships from which the idea of right can be drawn.

Keown's central argument for compatibility with human rights is Buddhism's respect for human life. The human being is a precious life form.⁴⁴ A sentient being must accumulate a very high level of merit in order to be born human. That possibility is slim. In addition to scarcity, human life is precious because only in the form of human life can one reach one's maximum potential, understanding the noble truth and ending his suffering.⁴⁵ This respect forms the foundation of human dignity and the equality on which natural and inalienable rights rely.

Keown's suggestion on Buddhism's implicit rights theory is challenged by Craig Ihara. Ihara cites Joel Feinberg's work to show that while a right entails duty, the opposite is not necessarily true.⁴⁶ Duty can originate from other causes, e.g. moral duty. It is possible that some duties are mutual as two persons are due to perform reciprocal tasks but none is entitled to a claim should the other fail.⁴⁷ In such a case, failing to fulfil one's duty does not constitute an injury to another, who is unable to claim remedy. If, Ihara argues, dhamma is understood in term of a claim-right, as it has to be for Keown's argument to work, that would seriously change the

⁴¹ Keown, *Buddhism and Human Rights* 67.

⁴² *Ibid*, 67-68.

⁴³ *Ibid*, 68.

⁴⁴ Damien Keown, "Are There Human Rights in Buddhism?" in Damien V. Keown, Charles S. Prebish, & Wayne R. Husted (eds) *Buddhism and Human Rights* (Curzon 1998) 29-32; Schmidt-Leukel, *Buddhism and the Idea of Human Rights* 39; King, *Buddhism and Human Rights* 109.

⁴⁵ King, *Buddhism and Human Rights* 109; Peter Harvey, *An Introduction to Buddhist Ethics: Foundations, Values, and Issues* (Cambridge University Press, 2000) 37.

⁴⁶ Craig K. Ihara, "Why There Are No Rights in Buddhism: A Reply to Damien Keown" in Keown, *Buddhism and Human Rights*, 44-45.

⁴⁷ *Ibid*, 45-46; Joel Feinberg, 'The Nature and Value of Rights' (1970) 4 *The Journal of Value Inquiry* 243, 244-246.

nature of Buddhism.⁴⁸ He is not convinced that Buddhism has already contained a seed of the theory of right. Nonetheless, Ihara is aware that the language of right is useful in an increasingly pluralistic world and Buddhism might be able to construct the concept of right from materials such as a sense of human dignity.⁴⁹

Thai Buddhism focuses on the question of human rights. The most comprehensive and accepted interpretation of human right is that offered by P. A. Payutto.⁵⁰ Payutto considers human rights a useful idea but not the ultimate goal. Human rights are necessary to regulate a peaceful human-to-human relationship.⁵¹ However, it is only a compromise. Men respond to division, segregation, and competition by making practical compromises, by abiding by human rights.⁵² In his view, human rights is a negative or passive concept as it simply prevents violation by other individuals.⁵³ Yet Payutto's real goal is to foster true harmony and peace, which human rights alone are insufficient to do. The human being should maximize his potential, following dhamma and striving for the best possible outcome.⁵⁴ Dhamma is a positive concept as it actively advances the appropriate behaviour of a person which results in better living conditions.⁵⁵

Besides the flawed origin, Payutto criticizes human rights as merely a social convention. Human rights are artificial because the concept was created by men.⁵⁶ Thus, he is unconvinced that human rights are natural rights. Because human rights are not based on the eternal truth of dhamma, they cannot last.⁵⁷ Another criticism is that human rights deal only with social behaviour. It cares not about mental advancement.⁵⁸ Payutto would prefer dhamma to human rights because of its finer qualities dealing with inner peace and wisdom.

⁴⁸ Ihara, *Why There Are No Rights in Buddhism* 44.

⁴⁹ *Ibid*, 47-49.

⁵⁰ An excerpt of Payutto's idea on human rights can be accessed at Seeger, "Theravada Buddhism and Human Rights; Soraj, *Buddhism and Human Rights*.

⁵¹ Payutto, *Human Rights: Social Harmony or Social Disintegration* (7th edn, Ministry of Foreign Affairs, 2003) 2-3.

⁵² *Ibid*, 4.

⁵³ Payutto, *A Buddhist Solution for the Twenty-First Century* (20th edn, Department of Religious Affairs 2010) 17-18.

⁵⁴ Payutto, *Human Rights* 18-21.

⁵⁵ Payutto, *A Buddhist Solution* 22-25.

⁵⁶ *Ibid*, 20.

⁵⁷ Payutto, *Buddhist-style Juridical Science* 22-23.

⁵⁸ Payutto, *A Buddhist Solution* 21-22.

Payutto identifies the root of the shortcomings of human rights in humanity's 'hard relationship' with the world.⁵⁹ Hard relationship assumes that western knowledge, of natural science, social science, and humanities, is built on an egoistic presumption, so it fails to apprehend true human nature, which can be understood only if approached holistically and humbly, without fear or hatred.⁶⁰ In other words, Western ideas are anthropocentric. A man is placed wrongly as the master of the world. Not only do men have a faulty relationship with other humans, but also with themselves and nature. He warns of two extremes to be avoided, that of the total disregard of rights, and the obsession with rights. Those who disregard rights bring about chaos and violence. Those obsessed with rights will be occupied with making claims — a behaviour considered selfish.⁶¹ Under such a condition, it is argued, society will disintegrate.

How can a Buddhist avoid the two extremes? A person must be mindful of dhamma, which Payutto understands as true nature. If a man understands the natural order, he will improve his relationship with others, with himself, and with nature. He will treat others with genuine respect.⁶² He will reach inner peace and freedom, which is true freedom from worldly or materialistic hindrance.⁶³ Moreover, he will be a harmonious part of the natural world. Payutto stresses the importance of education in teaching dhamma in equipping an individual with the correct knowledge and values.⁶⁴

Payutto's criticism of an obsession with rights hints at influence from his senior fellow, another famous scholarly monk, Buddhadasa. Buddhadasa expressed his dismay that the mindless exercise of rights disrupted the traditional social order, which he deemed proper. He stressed that liberal democracy had to be contained by dhamma. However, Payutto does not go as far as Buddhadasa, who controversially advocated introducing a dhammic dictatorship form of government to actualize true peace and harmony.⁶⁵

⁵⁹ *Ibid*, 8-11. See Kenneth Inada, 'A Buddhist Response to the Nature of Human Rights' in Keown *et al*, *Buddhism and Human Rights* 4-6.

⁶⁰ Payutto, *A Buddhist Solution* 21.

⁶¹ Payutto, *Human Rights* 13-14.

⁶² *Ibid*, 21-22; Payutto, *A Buddhist Solution* 31-32.

⁶³ Payutto, *A Buddhist Solution* 32-33.

⁶⁴ See Payutto, กระบวนการเรียนรู้เพื่อพัฒนากษัตริย์ประชาธิปไตย [*Learning Process to Develop Man for Democracy*] (4th edn, Mahachulalongkornrajavidyalai University, 2000).

⁶⁵ Schmidt-Leukel, *Buddhism and the Idea of Human Rights* 43-44.

Despite their anti-Western sentiment, Payutto's understanding of right is markedly different from Sulak's. Payutto is basically a Thai nationalist. Rights are not a by-product of dhamma. For Payutto, it is an introduced Western means of advancing a person's interest. However, it is an inferior means to dhamma, which yields supposedly a more long-lasting result. Clearly, Payutto fails to separate the realm of law from morality. His strong point is that he confirms Buddhism's compatibility with the modern values of human rights while asserting Buddhism's superior quality. Human rights are just one means but only dhamma is the true solution to a sustainable end. This interpretation of human rights is widely received, not least by the President of the National Human Rights Commission, Saneh Chammarik (2001-2009). Saneh admitted that his view of human rights was inspired by Payutto.⁶⁶ While he valued human life, he warned of the individualism that inevitably came with liberalism.⁶⁷ Saneh preferred dhamma which could bring the greatest good to the public in the form of internal liberation.⁶⁸

Payutto's interpretation resembles the interest theory. He considers rights as a tool to advance a holder's interest in living in a non-violent environment. He criticizes the idea of rights as entitlement, as selfish, as too individualistic for maintaining a harmonious society. However, his interpretation of interest is narrow and rigid; it must comply with Buddhism's ideals. He does not approve every kind of interest. In his view, Buddhism's interest goes beyond the secular interest of life, property, and liberties. The ultimate interest is (1) for a person to have internal freedom, which is considered the real freedom, liberation from desires and suffering, (2) for society, the permanently peaceful social order, and (3) an appropriate relationship with the world.⁶⁹ Buddhism does not deny consideration for secular interests but discourages people from being fixated with them, and promotes the aiming for higher, finer interests.

Thus, the dominant way in which Buddhism is articulated in Thailand has not broken away from the world of antiquity. It considers rights as the proper state of affairs in conducting a life with other members of society and the world. A right is not a power within oneself to decide one's own path but the ideal way of living, legally, politically, and morally. This view deprives Buddhism's version of rights from the preemptory force which the will theory considers the essential component. With very narrow goals in mind, a man has potential and a duty, not

⁶⁶ Saneh Chammarik, *Buddhism and Human Rights* (Office of National Commission of Human Rights, 2002) viii.

⁶⁷ *Ibid*, 31-33.

⁶⁸ *Ibid*, 6-7.

⁶⁹ Payutto, *A Buddhist Solution* 49-50.

freedom, to utilize that potential for that specific goal which Buddhism considers a good life. Buddhism will not approve an exercise of right in a harmful or useless manner, not even in a selfish manner. At least, an exercise of a right must not violate the Five Precepts or ignore the Six Directions principles. This is not liberty in the normal sense. Buddhism is concerned not with the liberty to do whatever one wishes within the limit of law, but with the liberation from desires and suffering which actually limits the choices of that individual. Thus, Buddhism does not believe in the legitimacy of a right as a sphere of individual freedom.

Another notable shortcoming of the Buddhist theory of rights concerns the idea of claim. Claims makes rights stand out from other moral commitments. Again, the absence of a claim originates from the anti-anthropocentric view. However, a claim is an essential component of rights. Being able to make a claim means that rights can be realized. Having an ability to make a claim gives the concept of right moral significance because it allows a claimant to stand up, look at others in their eye, and feel equal to everyone else.⁷⁰ An ability to make a claim gives the claimant a sense of human dignity that is essential to the idea of a human right.⁷¹ Making a claim confirms that each and every person is equal in his capacity to enjoy that entitlement.⁷² It roots the ground of rights in the value of the human right-holder as an end in themselves. Keown does not discuss what a person could do if someone fails to deliver his due. Ihara, in criticizing Keown's ideas, indicates that making a claim when someone fails to fulfil his duty would seriously change the nature of Buddhism.⁷³ Sulak mentions briefly that if a king fails in his role in the tri-partite model, that he has been unable to enforce dhamma upon his subjects, then the people may oust him.⁷⁴ However, Sulak has never addressed the problem of what happens if a person is wronged. Payutto warns of obsession with entitlement. His warning implies that making a claim to one's entitlement is not encouraged. It can easily become a selfish act which leads to argument and social disintegration. In principle, regardless of law or right, which is only a social arrangement, a proprietor will surely be punished by the true law of karma. That might explain why many discussions about rights in Buddhism seem to overlook the question of claim. The Dalai Lama, for example, does not attempt to make a claim over Tibet's independence. Instead, he prefers to make a plea to the Chinese government to

⁷⁰ Feinberg, *The Nature and Value of Rights* 252.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Ihara, *Why There Are No Rights in Buddhism* 48.

⁷⁴ Soraj, *Buddhism and Human Rights* 100.

stop the abuses and surrender Tibet to his people.⁷⁵ Yet this leaves open one big question; how can Buddhist ethics be considered in terms of rights if it rejects the concept of making a claim?

C. Ideological Foundation of Rights

Given the above discussion, although Buddhism shares the same goal with human rights — to bring dignity and peace to humans, as well as further induce development of the world — this embryonic theory is still markedly different from the modern theory of rights. Buddhism's version of rights lacks the characteristics that empower the individual to control their life. Such a discrepancy stems from their differing ideological standpoints which is addressed in this section. One of the most essential differences is the view on the nature of human beings, that is, on their underlying moral anthropologies. While human rights are based on the idea of human dignity, equality, and liberty, Buddhism does not adopt the same view.

(a) Dignity vs. the Buddhist Cosmology

The theory of rights is based on the idea of inherent dignity which places man at the centre of everything. The sense of human self-authorship demands respect from others and empowers humans to claim their entitlements. While Buddhism prizes human life highly, it rejects such anthropocentricity. Buddhist scholars often warn against the danger of individualism, of arrogance and selfishness which are attached therewith, if a person is convinced that he is the master of himself.⁷⁶ On the contrary, Buddhism places humans not at the centre but as a part of a larger scheme of things dictated by dhamma.⁷⁷ A human being is connected with other humans, animals, and nature through a modest and humble 'soft' relationship. On the one hand, this provides the basis for human rights, especially for the later generation of human rights that move beyond the individual person e.g. animal rights or the right to good environment.⁷⁸ It argues that we have responsibility over these matters whereas anthropocentric thinking easily convinces humans to overlook these duties to non-human beings. This anti-anthropocentric view is the strongpoint of Buddhist ethics. On the other hand, this position enables the idea of

⁷⁵ King, *Buddhism and Human Rights* 114-115.

⁷⁶ *Ibid.*, 108-109; Schmidt-Leukel, *Buddhism and the Idea of Human Rights* 41-44.

⁷⁷ Schmidt-Leukel, *Buddhism and the Idea of Human Rights* 38-39; Keown, *Buddhism and Human Rights* 71; Harvey, *An Introduction to Buddhist Ethics* 12-14, 150-152.

⁷⁸ See Waldau, *Buddhism and Animal Rights* 102; Ian Harris, 'Buddhism and Ecology' in Keown, *Contemporary Buddhist Ethics* 114-120; Harvey, *An Introduction to Buddhist Ethics* 156-158.

human rights to be more easily challenged, particularly in Theravada cosmology. In Theravada's multi-fold universe, a human world is just one world. There are lower worlds, of several levels of hell, and higher worlds, of several levels of heaven. A man can ascend or descend through these many worlds depending on his karma. It is only within the present world that a man is placed at the highest recognition. Yet still, above a man there are many higher levels of being that he should strive for and he may attain the higher world only by dhamma, not through rights. The right is only a fictionalized idea applicable to this man-world, but rendered meaningless elsewhere.

(b) Equality vs. Theory of Karma

Within this human world, not all men are born equal. Although Buddhism rejects the idea of caste, the Buddhist world divides people into classes according to karma, perhaps the most significant impediment to the realization of human rights in Thailand. In practice, this means a hierarchical social structure; monks over laypeople, nobles over peasants; senior over youth, and men over women. Similar to Buddhadasa's and Payutto's understanding of human rights, the notion of equality, too, is only created by humans so it is a relative or conventional truth. The state of equality does not exist at the ultimate level. According to Thai Buddhist cosmology discussed in earlier chapters, the ultimate truth is that each individual is born into different conditions, of family, physique, and destiny, according to his inherent karma. The law of karma cannot treat all human beings equally. Meritorious souls are born into nobler families while sinful ones suffer the consequences. The arrangement is quite rigid, hence the belief in path dependence. It justifies the existence of social classes. The idea of human rights thus works only in certain situations but it should not claim to be natural or inalienable. Disdain of equality is exacerbated by Payutto's misunderstanding of the concept. He cautions that, if we are to create an egalitarian world, the government must materially provide everyone with the same.⁷⁹ Again, this material equality is selfishness, leading to bickering for materialistic gain.

In reality, the karma theory is translated into the world where each individual may enjoy different levels of rights according to their rank.⁸⁰ *Sitthi*, a Thai translation of rights, originally means power, and is a very apt choice. The higher one is in the social and political ranking, the

⁷⁹ Payutto, *Buddhist-Style Juridical Science* 30.

⁸⁰ Thongchai, *Impunity and Understanding of Human Rights* 200.

more power and rights, he possesses. Thus, peasants, youths, the poor, and other marginalized groups, are not supposed to be treated the same as lords, seniors, the rich, and other powerful people. Duties befall those of lower rank while high-ranking individuals have leeway to circumvent or ignore the rights of others.

(c) Liberty vs. Liberation

Lastly, without dignity and equality, the idea of liberty can hardly be conceived. The modern view of rights asserts that a man, as the master of his fate, within the designated sphere, makes his own decisions, regardless of how good or bad that decision is. However, Buddhism, although it allows a being to stray for countless reincarnations, ultimately expects a man to walk the path of enlightenment. A life should have a purpose. Buddhism places emphasis not on liberty, but on liberation, as the ideal goal of liberating oneself from feelings that cause suffering.⁸¹ Therefore, the choice of a man is much more limited.

Buddhism's anti-anthropocentricity, social hierarchy, and self-liberation pose a challenge for the acceptance of human rights in a Buddhist society. It fails to understand that the concept of human rights is essentially a political and legal claim to construct a relationship between an individual and the state. Human rights are not replacements for ethics. Buddhism seems to assert a fundamental continuity between personal and public morality, and so cannot countenance the idea that someone has the legal right to be morally wrong.

D. Buddhist Human Rights in Practice

The above sections demonstrate that Thai Buddhism is familiar with human rights, though it misinterprets the idea. The next question is what has the Buddhist version of human rights done to the human rights situation in Thailand?

Thai political history is rife with human rights abuses. Decades of military dictatorship and the war against communism resulted in massacres, assassinations, and torture committed by the state. Only after the 1992 Black May Uprising did Thais demand better protection of rights and liberties, which led to the 1997 Constitution. First and foremost, the 1997 Constitution tried to

⁸¹ Payutto, *A Buddhist Solution* 35-37.

prevent further violations by incorporating a very extensive bill of rights that covered all the three generations of rights. Andrew Harding observes that the bill of rights in the 1997 and 2007 Constitutions are up to North American and European standards, and so are a very successful accomplishment.⁸² Among the many mechanisms to promote and protect human rights, the 1997 Constitution established new independent agencies, notably, the Constitutional Court, the Administrative Court, and the National Human Rights Commission (NHRC). The new courts were assigned to safeguard the rights and liberties of Thais through judicial review while the National Human Rights Commission would investigate and report the abuses, including referring a case to an appropriate court.⁸³

The outcome received mixed reactions. The judiciary has found a number of statutes unconstitutional because they violated the right to a fair trial, presumption of innocence, the right to occupation, and gender equality.⁸⁴ However, it endorsed the legality of two coup d'états and refused to review the exercise of emergency power that left many anti-government protesters dead and injured.⁸⁵ The NHRC has suffered from weak powers and considerable interference. It had a rocky start because the first commission (2001 — 2009) had only advisory power, which was inadequate to investigate the government's abuses such as the war on drugs (2003-2004) and the Deep South violence.⁸⁶ Later, the second (2009 — 2015), and third (2015 — present), commissions appeared to side with the government, refusing to investigate the army's deadly crackdown of the anti-government protest in 2010, and torture and unlawful detentions under the 2014 military regime.⁸⁷ The NHRC was further tampered with by the fact that the current commission was appointed by the junta's rubber-stamp National Legislative

⁸² Andrew Harding, 'Buddhism, Human Rights, and Constitutional Reform in Thailand' (2007) 2 *Asian Journal of Comparative Law* 1, 17; Harding & Leyland, *The Constitutional System of Thailand* 222-226.

⁸³ Harding & Leyland, *The Constitutional System of Thailand* 228-229.

⁸⁴ See Kla Samudavanija, ขอบเขตอำนาจหน้าที่ศาลรัฐธรรมนูญเพื่อการส่งเสริมการปกครองในระบอบประชาธิปไตยและคุ้มครองสิทธิเสรีภาพของประชาชน [The Constitutional Court's Jurisdiction to Promote Democracy and Protect Rights and Liberties] (King Prajadhipok's Institute, 2015) chapter 4, especially 298-299; Harding & Leyland, *The Constitutional System of Thailand* 176-82.

⁸⁵ Const. Trib. Decision 3-5/2550 (2007); Const. Ct. Decision 9/2553 (2010); Const. Ct. Decision 10-11/2553 (2010). See Piyabutr Saengkanokkul, ศาลรัฐธรรมนูญ ตุลาการ ระบอบเผด็จการ และนิติรัฐประหาร [*Court and Coup: Judiciary, Dictator Regime, and Legal Coup*] (Same Sky Books 2017) 154-186.

⁸⁶ See Human Rights Watch, *Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights* (Human Rights Watch, 2004) 7-23; Harding & Leyland, *The Constitutional System of Thailand* 229-232.

⁸⁷ 'NHRC Slammed over Protest Report' *Bangkok Post* (13 August 2013)

<<https://www.bangkokpost.com/thailand/politics/364427/national-human-rights-commission-accused-of-political-bias>> accessed 28 September 2019; 'Thai Human Rights Commission Fails Appraisal' *Bangkok Post* (31 December 2014) <<https://www.bangkokpost.com/thailand/general/453435/national-human-rights-commission-of-thailand-nhrc-faces-downgrading-for-incompetence>> accessed 28 September 2019.

Assembly so the commissioners were probably already biased against dissidents.⁸⁸ There appear to be some areas in Thai politics where human rights are not applicable.

The following sections address three topics that illustrate the problematic relationship between state, human rights, and Buddhism. This section shows how the Buddhist theory of human rights actually endorses or exacerbates human rights abuses in Thailand.

(a) The Culture of Impunity

In 2018, Human Rights Watch (HRW), reporting on Thailand's human rights situation, pointed out the deeply embedded culture of authoritarianism. It reported widespread abuses, mostly by the army and other security forces.⁸⁹ The military periodically carries out coups, the latest in 2014. The army is responsible for suppressing people's political and civil rights, with secret detention, torture, intimidation, courts-martial, and forced disappearance. Freedom of expression is specifically mentioned as being severely restricted. Marginalized people are hardest hit, the Muslim minority in the restive Deep South, and refugees, asylum seekers, and migrant workers. Migrant workers are extorted and beaten. Asylum seekers are deported back to their country of origin, putting their lives at risk. Most importantly, all of these human rights violations have gone unpunished. Thais appear to accept such rogue behaviour as normal. The culture of impunity remains very strong.

The HRW Report is only the tip of a much larger iceberg. It accurately portrays Thailand's pattern of human rights violations. The Thai state, especially after WWII, has engaged in the all activities described above. There were five massacres in 1973, 1976, 1992, 2009, and 2010 when the government crushed anti-government protests.⁹⁰ In addition, there are widespread records of torture, detention, forced disappearance of student activists, union leaders, ethnic Malays, etc.⁹¹ Two incidents that drew international attention are the war on drugs in 2003-2004 and the Deep South insurgency from 2004. In both incidents, the armed forces were

⁸⁸ 'NHRC Should Strive for Balance' *Bangkok Post* (30 December 2018) <<https://www.bangkokpost.com/opinion/opinion/1602910/nhrc-should-strive-for-balance>> accessed 28 September 2019.

⁸⁹ Human Rights Watch, 'Thailand: Events of 2017' *Human Rights Watch* (2018) <<https://www.hrw.org/world-report/2018/country-chapters/thailand>> accessed 28 September 2019.

⁹⁰ See a brief account of violence at Prajak, *Murder and Regress*.

⁹¹ Tyrell Haberkorn, *In Plain Sight: Impunity and Human Rights in Thailand* (University of Wisconsin Press 2018) chapter 3.

involved in extrajudicial killings and the torture of thousands of innocent people. Despite the fact that these crimes are well-documented, no perpetrator has even been brought to justice.⁹² There has been no serious probe and no government official ever indicted.⁹³ Nor have the above human rights protectors seriously challenged the state's invincibility. Perpetrators were lawfully exonerated.⁹⁴ The judiciary cautiously dismissed the cases of human rights abuses on various legal technicalities.⁹⁵ Tyrell Haberkorn observes that these crimes have become part of the public duty of many state apparatuses and that there are legal as well as cultural mechanisms to shield the perpetrator from accountability.⁹⁶ The feeling of invincibility enables human rights violations to continue unabated.⁹⁷

Thongchai Winichakul identifies the Buddhist idea of social hierarchy as a major contributing factor to perpetuating the culture of impunity, and ultimately, human rights violations. In an unequal society, men of higher social ranking, i.e. holding high position in the government or possessing large wealth and power, enjoy so many privileges while those of lower status receive much less.⁹⁸ According to this moralistic thinking of merit-equating-power, the more power one acquires, the less corrupt one becomes. It basically upends the general assumption that more power tends to lead to corruption more easily. As a result, the marginalized groups are vulnerable to abuses as they cannot question the powerful ones, whose privileges protect them from accountability. Thongchai argues that the Buddhist organic society idea has survived Siam's modernization and is still ingrained in today's thinking of Thais.⁹⁹

Another factor that negatively contributes to human rights violations is Buddhism's scepticism towards human rights as an absolute idea. Payutto's caution about an obsession with rights is translated into blatant disregard by the state. Instead of going beyond the minimum standards of human rights, it allows the state to ignore the bill of rights altogether. Because Buddhism

⁹² For example, see Tyrell Haberkorn, 'When Torture is a Duty: The Murder of Imam Yapa Kaseng and the Challenge of Accountability in Thailand' (2015) 39 *Asian Studies Review* 53; Rungrawee Chalermripinyorat, เมื่อความจริงคือจุดเริ่มต้นของความเป็นธรรม กรณีศึกษาคณะกรรมการตรวจสอบข้อเท็จจริงในบริบทความขัดแย้งชายแดนใต้ [Fairness Begins with Truth: Case Study of Fact-Finding Commissions in Southern Border Conflict] (2016) 14 *Fah Daew Kan* 77.

⁹³ Puangthong Pawakapan, ใบอนุญาตให้ลอยนวลพ้นผิด องค์การอิสระกับการสลายการชุมนุมเสื้อแดงปี 2553 [License for Impunity: Independency Body and the Red Shirt's 2010 Crack Down] (2016) 14 *Fah Daew Kan* 137.

⁹⁴ Tyrell Haberkorn "The Hidden Transcript of Amnesty: The 6 October 1976 Massacre and Coup in Thailand" (2015) 47 *Critical Asian Studies* 44.

⁹⁵ Haberkorn, *In Plain Sight* 180-183; Haberkorn, *When Torture is a Duty* 56-62.

⁹⁶ Haberkorn, *In Plain Sight* 6-7.

⁹⁷ *Ibid.*, 221.

⁹⁸ Thongchai, *Impunity and Understanding of Human Rights* 200-202.

⁹⁹ *Ibid.*, 205-210.

regards human rights as interests, violations may be justifiable if there is a more compelling interest than dignity, equality, and liberty. Because Thai Buddhism is wary of individualism, the question of compelling interest is determined from the perspective of collectivism. Two questions are often asked when a person attempts to invoke his rights; first, whether the invocation of right is done with a wholesome motive, and second, whether the invocation of right is beneficial to the community. These interests are, for example, national security, government stability, or social unity. Victims are sometimes asked to forego their rights to justice in order to maintain social harmony.¹⁰⁰ In reality, that means an individual sacrifice for communal interests, which helps suppress any challenge to the status quo.

The role of individual monks in supporting human rights violations cannot be underestimated. In 1976, a famous monk Kittivuttho urged the killing of left-wing students, claiming that an act for the greater good was not sinful.¹⁰¹ A similar idea was repeated in 2010, when another famous monk Vajiramedhi claimed that wasting time was more sinful than manslaughter.¹⁰² The infamous 1970 speech was given to the right-winged militias to fight left-leaning university students and the 2010 speech was circulated amidst the growing call for the government to use deadly force against anti-government protesters. In both cases, many Thais were killed but the government were not held accountable. The Sangha Council even refused to discipline Kittivuttho, lamely citing a lack of evidence.¹⁰³

In recent years, even the masses who had once advocated the end of dictatorship and demanded better protection of rights and liberties have regrettably begun to change their view. This mentality grows more conspicuous with the upsurge of moralism and conservatism that accompany democratic backsliding.

(b) Democratic Backsliding

One of the biggest contestations between Buddhism and human rights concerns democracy, which most people equate to human rights. It is not coincidental that human rights flourished

¹⁰⁰ Puangthong Pakawapan, ‘วัฒนธรรมล่อชนวนพันคิด’ [Culture of Impunity] in Kritsada Supwatthanakun (ed) *แผ่นดินจึงดาล การเปลี่ยนผ่านในสภาพบังคับ* [Angry Land: Transition under Pressure] (Prachatai 2017) 88-89.

¹⁰¹ See Keyes, *Political Crisis and Militant Buddhism* 153-155.

¹⁰² Suluck Lamubol, ‘Understanding Thai-Style Buddhism’ Prachatai (28 February 2014) at <<https://prachatai.com/english/node/3883>> accessed 19 September 2019.

¹⁰³ Keyes, *Political Crisis and Militant Buddhism* 158-159.

only after the democratic liberalization in 1997 and declined steadily after the 2006 coup. The 2006 coup, the watershed moment for Thailand's democratic decline, ousted Thaksin Shinawatra. This controversial PM won the 2001 election and was massively popular. However, he had abused his popularity to paralyse the separation of power, silence critics and enrich his cronies.¹⁰⁴ Moreover, Thaksin challenged many traditional institutions, in other words, the monarchy, Buddhism, and the judiciary, attempting to control them.¹⁰⁵ Thaksin presents a classic dilemma for the liberal democratic model of government when an election is held periodically but the rule of law has not been firmly established.¹⁰⁶ Constitutionalism is abused to legitimize the authoritarian regime.¹⁰⁷ Thaksin's opponents, mostly those in the upper middle classes and royalist elites, formed an anti-Thaksin alliance which called for an extra-constitutional intervention.¹⁰⁸ The anti-Thaksin group constructed their identity by contrasting themselves with Thaksin; they claimed to be a group of righteous people.¹⁰⁹ They demanded the Thaksin-affiliated governments suspend the constitution, resign, and install a third party to run the administration.¹¹⁰

Soon, the anti-Thaksin alliance evolved into an anti-democratic one.¹¹¹ They mistakenly held Thaksin as the embodiment of democracy so they concluded that democratization should be undone. The campaign against democracy rested on a simple premise that Thais are not born equal.¹¹² Democracy would have worked if Thais were equally literate. However, when there is no social equality, there should not be political equality. Better-educated classes are deemed to make better decisions than those of lower-educated classes who voted overwhelmingly for Thaksin.¹¹³ This thinking strongly reflected that of Theravada Buddhism's hierarchical social

¹⁰⁴ Kevin Hewison, 'Thaksin Shinawatra and the Reshaping of Thai Politics' (2010) 16 *Contemporary Politics* 119, 122-124; Tom Ginsburg, 'Constitutional Afterlife: The Continuing Impact of Thailand's Postpolitical Constitution' (2009) 7 *International Journal of Constitutional Law* 83, 96-97; Kasian, *Toppling Thaksin* 28-33.

¹⁰⁵ Hewison, *Thaksin Shinawatra* 127-130.

¹⁰⁶ Kasian, *Toppling Thaksin* 13-17.

¹⁰⁷ See Scheppele, *Autocratic Legalism*.

¹⁰⁸ Kasian, *Toppling Thaksin* 35-36.

¹⁰⁹ See Michael Nelson, 'Vote No! The PAD's Decline from Powerful Movement to Political Sect?' in Pavin Chachavalpongpun (ed) *Good Coup Gone Bad* (ISEAS 2014); Prajak, *Dehumanization*.

¹¹⁰ Duncan McCargo, 'Thailand in 2014: The Trouble with Magic Wand' (2015) *Southeast Asian Affairs* 335, 339.

¹¹¹ See Apichart Satitniramai and Anusorn Unno, การเมืองคนดี: ความคิด ปฏิบัติการ และอัตลักษณ์ทางการเมืองของผู้สนับสนุน "ขบวนการเปลี่ยนแปลงประเทศไทย" [Good Man's Politics: Political Thoughts, Practices, and Identities of the Change Thailand Movement Supporters] (Thailand Research Fund 2017) 47-58.

¹¹² *Ibid*, 121-122.

¹¹³ Chris Baker, 'The 2014 Thai Coup and Some Roots of Authoritarianism' (2016) 46 *Journal of Contemporary Asia* 388, 398.

structure.¹¹⁴ Thus, democracy is wrong in treating all people alike. The conclusion is that since the majority have failed to exercise their rights correctly, their rights should be retracted. Only some people should be given political and civil rights. The narrative invited the traditional oligarch to rule without the people's consent or respect for their rights. Ironically, the alliance's choice goes to the military as their representative of a benevolent ruler.

Juntas, especially the 2014 National Council of Peace and Order (NCPO), are the great violators of human rights. Over five years, the NCPO arrested, tortured, and even allegedly murdered dissidents causing a mass exodus of political activists.¹¹⁵ It also devised a programme to invade citizen's privacy through an online surveillance scheme as well as public indoctrination.¹¹⁶ Meanwhile, the NCPO pledged to make human rights the national agenda, and the 2014 Interim Charter guaranteed the rights and liberties of Thais according to constitutional law and international obligation.¹¹⁷ The bleak reality and the goodwill gestures suggest that the junta's understanding of rights does not align with the universal concept but resembles that of Thai Buddhism.

Very notable is the Thai Premier's view on election. Prayuth Chan-Ocha, the junta leader and the prime minister, often blamed the citizens for failing to take care of their own affairs so that he was forced to involuntarily stage a coup and become prime minister.¹¹⁸ His roadmap back to democracy has been delayed for more than four years but whenever his opponents have reminded him, he has dismissed the request by citing the abuse of democracy, of chaos and

¹¹⁴ Apichart & Anusorn 111-113; PAyutto, *Learning Process to Develop Man for Democracy* 3-10.

¹¹⁵ James Buchanan 'In Thailand, Activists Are Literally Fighting for Their Lives' *VICE* (20 May 2019) at <https://www.vice.com/en_asia/article/597y93/in-thailand-activists-are-literally-fighting-for-their-lives> accessed 19 September 2019.

¹¹⁶ Adam Bemma, 'Threats and Abuse: Critics Fear Effect of New Thailand Cyber Law' *Al Jazeera* (25 January 2019) at <<https://www.aljazeera.com/news/2019/01/threats-abuse-critics-fear-effect-thailand-cyber-law-190125010818834.html>> accessed 19 September 2019; 'Education Ministry to Integrate Junta's 12 Thai Values into Education Curriculum' *Prachatai* (13 July 2014) <<https://prachatai.com/english/node/4215>> accessed 19 September 2019.

¹¹⁷ 2014 Interim Charter, art. 4; 'Thailand: Rights Agenda Hollow Without Major Reforms' *Human Rights Watch* (14 February 2018) at <<https://www.hrw.org/news/2018/02/14/thailand-rights-agenda-hollow-without-major-reforms>> accessed 19 September 2019.

¹¹⁸ See Prawit Rojanapruk 'Blame Problems on Past Govts, Not Junta: Prayuth' *Khao Sod English* (23 July 2018) at <<http://www.khaosodenglish.com/politics/2018/07/23/blame-problems-on-past-govts-not-junta-prayuth/>> accessed 19 September 2019; '15 of Prayuth's Super Cool, Super Snappy Advice for Thais: From Motorbike Gangster to Submarines' *Prachatai* (13 July 2015) at <<https://prachatai.com/english/node/5306>> accessed 19 September 2019.

corrupt politicians.¹¹⁹ With an election coming up in early 2019, Prayuth and his cabinet repeatedly cautioned Thais not to make the same mistake. Politicians must not fight over elections and people must cast their votes for the right candidate.¹²⁰ This message was strengthened on the eve of the election day; the Palace issued a proclamation urging Thais to vote for the ‘good guys.’ Besides, the Army Commander warned that he could not guarantee that the army would not intervene should Thais misbehave in exercising their political freedom.¹²¹ In other words, he might stage another coup if he deemed the election result undesirable or it was carried out in an unruly manner. Thais must show that the expression is beneficial to the society in order to be able to enjoy their political rights. The rights language is still used in an objective sense.

In addition to being a political enemy of the traditional elites, Thaksin is seen by many conservative Buddhists as demonic. His behaviour, corruption and human rights abuses, are unlawful as well as immoral. As a result, he, and his affiliates, were deprived of a fair trial. Many cases were investigated by biased bodies and his objections dismissed by the court.¹²² As a result, there were reports of many procedural irregularities. The new procedural code for a corruption case bars a fugitive from the right to appeal and corruption cases will have no statute of limitations.¹²³ These measures can be understood as the attempt to prevent Thaksin from returning to Thailand and Thai politics. His supporters, too, are considered as choosing the ‘wrong’ side and therefore falling down the political hierarchy. They have been harassed, charged with feigned criminal offences, and many have had their bail denied.

(c) Freedom of Expression

One area where human rights is severely limited is freedom of expression. While this freedom has not been totally banned, Thais understand the concept very differently from what is

¹¹⁹ “‘ประยุทธ์’ เตือนชุมนุมวุ่นวาย สะเทือนโรดแมปเลือกตั้ง” [Prayuth Warns, Disorderly Assembly Will Affect Election Roadmap] *Voice TV* (25 March 2018) at <<https://www.voicetv.co.th/read/SkrMubB9M>> accessed 19 September 2019.

¹²⁰ ‘Prayut Warns Against Vote-Buying in Next General Election’ *The Nation* (7 September 2018) at <<https://www.nationthailand.com/politics/30353976>> accessed 19 September 2019.

¹²¹ Patpicha Tanakasempipat & Panu Wongcha-um, “Thai King Makes Surprise Pre-Vote Plea for Security and Happiness” *Reuters* (23 March 2019) at <<https://www.reuters.com/article/us-thailand-election/thai-king-makes-surprise-pre-vote-plea-for-security-and-happiness-idUSKCN1R40D8>> accessed 19 September 2019.

¹²² Thaksin argued that the 2006 junta had appointed many of Thaksin’s critics to investigate his crime so he challenged the fairness of the investigation. The Supreme Court dismissed his point and appropriated Thaksin’s 7.6 billion THBs. Sup. Ct. Crim. Pol. Div. Decision Or. Mor. 1/2553 (2010).

¹²³ Organic Act on Procedure for Criminal Case of Political Office Holders B.E. 2560 (2017), sec 25 & 61.

generally understood. For example, there are two overlapping frameworks regulating how Thais should express their opinions. In the Five Precepts, the third precept forbids Buddhists from lying, swearing, gossiping, or talking nonsense.¹²⁴ Thus, freedom of expression in Thailand must only be invoked if it conforms with the Third Precept that freedom must be exercised only if it advances the public's interest. Otherwise freedom of expression can be forsaken for the sake of a more compelling interest. The most common compelling interest is the preservation of Thai-ness, which includes respect for traditional values and institutions. As a result, Thai-ness becomes the pretext to silence unwanted criticism. A young woman who complained about public transport was condemned for being unpatriotic and causing disunity, and eventually pressured to retract her statement.¹²⁵ Another student activist who challenged a flag salutation and prostration ceremony, which conservatives deem a symbol of Thai-ness, was labelled provocative and useless.¹²⁶ He was then subjected to physical assaults as well as online bullying campaigns.

However, freedom of expression is most severely limited when it concerns the monarchy, which many Thais consider the zenith of Thai-ness. In recent years, Thailand has witnessed a significant surge in the use of section 112 of the Penal Code, the crime of *lèse majesté*.¹²⁷ Anyone who defames, insults, or threatens the king, the queen, the heir-apparent, or the regent, is subject to three to fifteen years of imprisonment.¹²⁸ Because of the revered status of the monarchy, criticism to the monarchy, as David Streckfuss observes, is an equivalent to treason.¹²⁹

Section 112 is already the harshest among those countries that still retain the *lèse majesté* law.¹³⁰ Its implementation further increases the suffering of those accused, whose basic rights are denied. There is no certainty in this draconian law as the extent of the crime, originally covering only the living king, queen, the heir-apparent, and the regent, has been expanded to

¹²⁴ Pinyapan, *Thai-pitaka* 334-335.

¹²⁵ 'This Country Sucks: Pop Singer's Tweets Trigger Public Debate' *Prachatai* (3 August 2017) <<https://prachatai.com/english/node/7308>> accessed 19 September 2019.

¹²⁶ 'Leading Student Activist Accused of Improper Behaviour' *Prachatai* (11 August 2017) <<https://prachatai.com/english/node/7323>> accessed 19 September 2019.

¹²⁷ David Streckfuss, 'Freedom and Silencing under the Neo-Absolutist Monarchy Regime in Thailand, 2006-2011' in Pavin, *Good Coup Gone Bad* 119-126.

¹²⁸ Penal Code, sec. 112.

¹²⁹ Streckfuss, *Freedom and Silencing* 126-130.

¹³⁰ *Ibid*, 115.

cover the entire idea of monarchy. Sentencing has become even harsher lately.¹³¹ An accused will also have his bail denied, meaning that the trial itself turns into an ordeal and defending himself in court is almost impossible.¹³² Many of the accused have decided to plead guilty to end the suffering.¹³³ Moreover, although in principle the law should indiscriminately prohibit circulation of slanderous items regardless of intention, in reality, conviction and punishment seem to be conditioned by the motive of the proprietor. Only those who are identified as Thaksin's supporters or sympathizers get the worst possible treatment. The anti-Thaksin group, generally considered royalists, receive greater leniency. Once a royalist newspaper published the slanderous speech of an anti-royalist speaker, who was later sentenced to 15 years in prison. The editor received bail and later had his imprisonment suspended.¹³⁴ Thus, in addition to the overly broad application and unfair procedure, the law is abused to harass political opponents rather than protect the royal family. Unsurprisingly, the Thai crime of *lèse majesté* has been subject to heavy domestic and international criticism.¹³⁵

Defending the *lèse majesté* law, Borwornsak Uwanno, a royalist legal scholar, adopts the relativistic argument that it is a unique feature of Thai democracy. Claiming to be speaking on behalf of all Thais, Borwornsak portrays the king as the dhammaraja and the father figure of the nation.¹³⁶ The king is beloved because of the House of Chakri's contribution to the prosperity of Thailand.¹³⁷ When someone verbally attacks the king, it is as if a miscreant son mistreats his father.¹³⁸ Borwornsak likens such an act to the defilement of a Buddha statue.¹³⁹ Even if the king might not want to press charges, it is the duty of all Thais to protect their father by punishing that ungrateful son.¹⁴⁰ His reasoning reflects a strong belief in the Buddhist

¹³¹ See Nirmal Ghosh, 'Record Jail Terms for Royal Insults' *The Straits Times* (8 August 2015) at <<https://www.straitstimes.com/asia/se-asia/record-jail-terms-for-royal-insults>> accessed 19 September 2019.

¹³² 'The Politics of Bail in Lese-Majeste Cases' *Prachatai* (3 April 2017) at <<https://prachatai.com/english/node/7049>> accessed 19 September 2019.

¹³³ For example, see 'Jatupat: Shared BBC's Article' *iLaw* at <<https://freedom.ilaw.or.th/en/case/756>>.

¹³⁴ See cases of Sondhi Limthongkul, the leader of the royalist Yellow Shirts, and Niran, Somdhi's webmaster at <<https://freedom.ilaw.or.th/en/case/45>> and <<https://freedom.ilaw.or.th/en/case/656>>.

¹³⁵ Duncan McCargo & Peeradej Tanruangporn "Branding Dissent: Nitirat, Thailand's Enlightened Jurists" (2015) 45 *Journal of Contemporary Asia* 419, 426-429; 'US Ambassador Raps Lese Majeste Sentences' *Bangkok Post* (26 November 2015) at <<https://www.bangkokpost.com/thailand/general/776709>> accessed 19 September 2019.

¹³⁶ Borwornsak Uwanno, ความผิดฐาน "หมิ่นพระบรมเดชานุภาพ": เอกลักษณะประชาธิปไตยในกระแสประชาธิปไตยโลก ["*Lèse-majesté*": A Distinctive Character of Thai Democracy amidst the Global Democratic Movement] (King Prajadhipok's Institute, 2009) 14. English text can be accessed at <<http://www.thailandtoday.in.th/monarchy/elibrary/article/200>>.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, 15.

organic society, that the king is the head while his subjects are the inferior parts and parcels of this body. Borwornsak's view echoes that of other royalists, who describe such an act as the equivalent of causing Buddha to bleed, the gravest crime a man could ever commit.¹⁴¹ Ironically, Borwornsak admits that the *lèse majesté* law has been abused for political purposes and might need more safeguards, but he is convinced that leniency from the courts and the royal pardon can help those convicted.¹⁴² The Constitutional Court repeated Borwornsak's rationale to affirm the constitutionality of the law. The king gains respect from his righteous behaviour. He displays the ten kingly virtues according to Buddhism. Thus, he is revered and inviolable as guaranteed in every constitution.¹⁴³

It is clear that freedom of expression is not absolute. Still, the limits placed upon Thais are much greater than the universal standard permits. Discussion of the monarchy is off-limits because the king is in a revered position and shall not be violated. He is the embodiment of Thai-ness, so harming his reputation is putting the nation at risk. The court is authorized to determine the boundary, which, empirically, shows obvious signs of arbitrariness. However, this arbitrariness is justified by the necessity to safeguard the monarch. *Lèse majesté* is a prime example of how a law is abused as an instrument to preserve the traditional socio-political hierarchy, the utmost important interest to Thai society that no freedom may interfere with. In one word, criticizing the sacred centre of the traditional Buddhist cosmology is treason.

E. Conclusion

Despite the shared goals of peace and development, there is little else that the current understanding of Thai Buddhism and human rights agree upon. The two differ markedly about the nature of rights and its ideological foundations. Although contemporary Thai Buddhism does mention human rights, it does not lead to a better appreciation or protection of such.

Classical Buddhism may rest its support for human rights on the belief in the preciousness of human life and potential for self-development. Yet Thai Buddhism holds a much more negative view. Sulak overlooks it while Payutto and Buddhadasa express scepticism, and even disdain.

¹⁴¹ 'Vasit Dejkuljorn Respond to US Ambassador on Lese Majeste Law' *Thai Tribune* (30 November 2015) <http://www.thaitribune.org/contents/detail/348?content_id=16082> accessed 1 April 2019.

¹⁴² Borwornsak, *Lèse-majesté* 17.

¹⁴³ Const Ct 28-29/2555 (2012).

Theravada Buddhism emphasizes rather a rigid political, social, and moral structure based on merit. A man's rights depend on his position in this hierarchy. Clearly this is distrust of a man's potential. As a result of this juxtaposition, Thai Buddhism cannot develop a theory, explanation, or interpretation that is compatible with the modern theory of human rights.

At best, Buddhism's theory of rights is porous. Buddhism still holds to an ancient view of rights as a proper state of affairs, but not as an entitlement to advance an individual's interests. Buddhism therefore still places emphasis on conducting an ideal life rather than enjoying freedom over one's own fate. It does not acknowledge the essential components of modern rights such as their preemptory force or claim. For example, Payutto's emphasis on the right way to exercise a right means a disregard of their preemptory force, which is fundamental to a right. When a right is not translated from an objective value to a subjective freedom, this leads to a very contradictory result, that a man should possess a right but have no liberty to exercise it. Buddhism's liberation means voluntarily refraining from exercising a right, a perplexing stance.

Thai Buddhism's negative view of human rights has a great impact upon their protection. In reality, the language of human rights in Buddhism is not translated into action. Indeed, it actually serves to constrain people's political and civil liberties.

However, as Ihara suggests when he criticizes Keown's view on human rights, Buddhism must begin to contemplate how to reinterpret Buddhism in order to make it more compatible with such modern universal values. The next, and final, chapter will discuss how Thai Buddhism might be able to reconcile itself with human rights, democracy, and the rule of law.

IX. Rethinking Buddhist Constitutionalism

The first half of the final chapter summarises the work from the previous eight chapters, which attempted to answer the two questions posed at the beginning of this dissertation. What is Thai Buddhist constitutionalism? Is Buddhist constitutionalism compatible with the liberal democratic constitutionalism of the modern day? The second, longer, half sets the agenda for further research. It asks if the discrepancy between traditional and universal values can be amended.

This study is built upon previous work on Buddhist political and legal ethics, which address specific aspects of Buddhist constitutionalism. However, it is the first study that attempts to unravel the myth of Buddhist constitutionalism in full. It insists that there is such a thing as Buddhist constitutionalism, which is overlooked by many scholars of law and religion. It draws from a wide variety of sources on the discussion of political governance, law, and natural rights. Focusing on Thailand, it brings to light some lesser known works by Thai scholars and thinkers whose ideas represent mainstream contemporary Thai thinking as regards political Buddhism. Most importantly, many of them are by prominent lawyers whose works are normally overlooked in the study of Buddhism and law. Also, the recent surge of interest in the role of Buddhism in politics means that there are a number of books and articles being produced, most of which are included in this dissertation. Thus, it bridges the two fields of law and Buddhist studies and goes further than other works in establishing the modern relevance of the unfamiliar concept of Buddhist constitutionalism.

A. Traditional Buddhist Constitutionalism

One theme that is prominent throughout the thesis is the supremacy of dhamma, understood as the eternal cosmic law. The last three chapters address the three key subjects of constitutionalism: political governance, the notion of law, and human rights. All of them identify the strong belief in dhamma, that it provides an ideal model of governance, law, and a guarantee of human rights, which the Thai state strives to follow. Yet they also disclose that the current interpretation of the dhamma of Thai Buddhism clashes with liberal democratic values.

Buddhist constitutionalism is premised on a positive view of the state. Agganyasutta describes the necessity of rules and governance in order to avoid violence and restore order. Through the interpretation by Trai Phum Phra Ruang and other local works, the result is the merit-based socio-political pyramid where the king sits at the zenith. Despite the idea of republicanism in a monastic life, Buddhist political governance is based on absolute monarchy. The king is the arbiter, chosen by the consent of society, and the conqueror of the world, through dhamma and not force. Ultimately, the king is sacred because he is an aspirant to be the future Buddha. Kingship has never been institutionalized, so there is no public-private distinction. His personal well-being is tied closely to the prosperity of the kingdom. Born from such belief is the king-sangha relationship that the ruler must patronize the sangha as part of his merit-making scheme. This thesis shows that the Mongkut-Chulalongkorn religious reforms did not modernize the Buddhist kingship idea. Therefore, the three images of the king are still revered in Thailand as shown in the case of King Bhumibol whose benevolence, in addition to religious ceremonies, earned him respect as the modern dhammaraja.

The theory of dhammaraja caused friction when it interacted with the concept of constitutional monarchy after the 1932 Revolution. The political hierarchy was challenged by egalitarianism; that human beings are equal and that anyone can become the ruler by popular consent. However, depending upon elections and coups as they do, politicians lack the same legitimacy that monarchs enjoy. Constitutional monarchy offers a partnership between democratic leaders and the Buddhist king, who acts as the stabilizing core of the new politics. However, this partnership is fragile and highly dynamic as the traditional force constantly attempts to usurp the less popular partner. The concept of the benevolent and pious king clashes with the idea of an elected leader who appears fraudulent by comparison, with accusations of corruption and infighting. The most recent political conflict is a good example of the culmination of traditional political authority. Thais witness the rise of a rhetoric of benevolent autocracy that undermines the democratic regime. It also raises the unresolved question of violence, which is necessary to help preserve the socio-political hierarchy.

The Buddhist world of Southeast Asia is divided into three realms: of the king, the sangha, and the ordinary people. The king is subject to rajdhamma while the sangha is under vinaya. Commoners are regulated by ordinary law. Buddha realizes the benefit of having rules to govern humans but he provides no specific code for lay people. This study proposes that the term 'law' denotes four types of rules. Dhamma is the eternal natural law, discovered and

revealed to the world by Buddha. As the universal rule, understanding and living according to dhamma can help the individual reduce their sorrow and suffering. The second law is vinaya, the monastic code given to the sangha in a piecemeal manner. Many Thais believe that vinaya derives from dhamma, and serves as a necessary component in the dissemination of Buddhism. The third type of law is dhammasastra, the customary legal code of mainland Southeast Asia. Since Buddha never promulgated a codified Buddhist law, local rulers were free to produce their own, which was a marriage of vinaya, Buddhist teaching, and local custom. As the origins of dhammasastra are claimed to emanate from the mythical sage who was affiliated with the first king of the Buddha lineage, the law was deemed sacred. Dhammasastra was deemed another derivative of dhamma. Law and Buddhism were deeply intertwined; therefore, the king theoretically could not make law. He only enforced karma on violators of dhammasastra. Dhammasastra had long gone with the arrival of the fourth type of law, modern positive law, in the early twentieth century CE. However, the reception proved problematic when Siam was forced to adopt the new system without consent. Beyond the codified laws, the idea of dhamma as the true law still has profound impact on the Thai legal community.

Although modern positive law is more easily accessible and efficient, it lacks the sacred quality of dhamma which continues to dominate the Thai legal mindset. On the one hand, dhamma is the goal and morality of law; dhamma denotes justice, fairness, and the rule of law as expressed in legal jargons. It is then higher in the hierarchy than man-made legislation. On the bright side, it provides guidance for legal personnel. Judicial training is heavily infused with Buddhism, teaching and practice. Dhamma answers a judge's professional and ethical problems as well as his personal conduct outside the courtroom. When the justice system fails, the victim is sometimes offered consolation by the thinking of karma. On the other hand, the supremacy of dhamma over man-made law challenges the sanctity of law itself. Many of the Thai intelligentsia and acclaimed monks dismiss law as an inferior or unnecessary invention so law is then only instrumental in achieving the higher goal of dhamma. In many cases, dhamma is cited to ignore the text of the law, causing tension among different political camps. The biggest question is how dhamma is defined.

This anti-Western intellectualism and the supremacy of dhamma are accentuated in the discussion of human rights. Despite the fanfare that Buddhism and human rights share similar goals of peace and development, in little else do human rights and Buddhist ethics overlap. The

view ranges from positive, that Buddhism contains some elements of human rights, to scepticism, to negative – that human rights are not necessary.

This conclusion conflicts with what many Buddhist scholars conventionally hold. When the world operates under the true law of dhamma, human rights actually earn little respect. Scholars have struggled first to match the two values, then to subjugate human rights under dhamma. However, the foundational difference, in ideology and concept, is still too great. Its view on human nature clashes with the anthropocentric view of the West so Buddhism approaches dignity, equality, and liberty differently. For a private individual, Buddhism encourages internal liberation from suffering so it does believe in exercising one's rights but only in the right manner. In other words, Buddhism still understands rights in the objective sense, not the subjective. Since modern human rights perceive rights in the subjective sense, it is vulnerable to abuse and inferior to dhamma. Here, the real meaning of the dhamma rhetoric can be better understood. Dhamma is used to encourage individuals to forego their rights in exchange for the greater good of the whole, in effect, preserving the traditional socio-political hierarchy.

In summary, Buddhist constitutionalism clashes with liberal democratic constitutionalism. Buddhism offers a rigid hierarchical political structure while democracy needs an egalitarian society. Buddhism's rule of law differs from the rule of law of the West; it is less certain and more arbitrary. Ultimately, the guarantee of rights and liberties is undermined by dhamma.

The tangible product of Buddhist constitutionalism is described in Chapter 3, which is further evaluated through the lens of universal international human rights in Chapter 4. When the supremacy of dhamma influences the formation of the constitutional and legal system, it produces, at the top, a problematic state-religion relationship, and at the regulatory level, discrimination and restriction. With Buddhism as the state ideology and identity, the constitutional system demands that the king and the government share the responsibility of taking care of the faith. Although they are tolerant of religious minorities, attention goes unequivocally to the Buddhist majority. This weak establishment is getting worryingly stronger through recent campaigns by Buddhist zealots.

When the weak establishment is translated into a regulatory scheme, it produces a multi-tier system that is subtly, yet systematically, discriminatory. Buddhism receives the most attention, followed by Islam, then Christianity, Hinduism, Sikhism, and others. Most importantly, the

constitutional mission to ‘promote and protect Buddhism and other religions’ does not view religious affairs from the aspect of freedom aspect but from that of regulation. It assumes that religion is not the personal matter of each individual to pursue his spiritual goal, but an important component of the social structure that must be rigidly preserved. As a result, privilege comes with control. Buddhism, the most privileged religion, is surprisingly the most restricted. There is an extensive regulatory scheme to ensure that the beliefs and practices of monks and lay followers are in line with the orthodoxy and orthopraxy of Thai Buddhism. Deviants from the official order face legal hardship. This mindset works less well with religious minorities, especially Islam. The absence of religious equality raises the question of whether non-Buddhists can ever enjoy full religious freedom. The tension is particularly high in the deep South where Muslim Malays fight against what they perceive as encroachment upon their identity. Security concerns force the Thai government to provide greater accommodation to Islam. Regrettably, accommodation heightens tensions among Thai Buddhists who fear losing their dominant status.

This thesis gives a preliminary view of Thai Buddhist constitutionalism and a framework for future study. There remain many more questions that may further enhance an understanding of the concept. For example, studies on the role of Buddhism in the judicial personnel training and justice system, or on Buddhist morals on the legislation of various subjects, are needed. They merit future research.

B. Synthesising a New Buddhist Liberal Democratic Constitutionalism

In summary, Buddhist constitutionalism is about the sacred king who occupies the top of the socio-political pyramid. Based on the notion of *barami*, this pyramid is the foundation of Thailand’s absolute monarchy. Buddhist constitutionalism emphasizes the supremacy of dhamma, understood as the ultimate natural law. Dhamma provides the king with political objectives as well as restraints. Therefore, modern values such as human rights or the rule of law are respected only as far as they are compatible with dhamma. These modern values are simply means to promote dhamma, but the king is ready to abandon them. This theory is problematic as the content of dhamma is decided by the king himself, leaving his subjects with no meaningful way to keep his power in check. Inevitably Buddhist constitutionalism clashes with liberal democratic constitutionalism.

Liberal democratic constitutionalism is defined by an egalitarian political structure, the sanctity of written law, and respect for human rights. However, the hierarchical political pyramid which supports absolute monarchy is directly contrary to the notion of equality, which demands a government by popular consensus. The supremacy of dhamma as the true law results in a Buddhist-infused justice system and Buddhist-style rule of law that undermine the modern positive law as well as the Western-style rule of law. Lastly, dhamma lacks several critical characteristics of human rights so the two ideas are not interchangeable despite the claim by several acclaimed Buddhists. Dhamma actually hinders the enjoyment of rights.

Thailand is the product of the two constitutionalisms. The conception of Buddhist constitutionalism began as early as the thirteenth century CE when King Li Thai penned Trai Phum Phra Ruang. All subsequent kings honoured the tradition of Buddhist kingship up until the Bangkok era. With the arrival of Western powers at the end of the nineteenth century CE, Siam faced an existential threat in forms of Christian and scientific ideas. Siam survived by metamorphosing the traditional kingdom into the modern nation state. Western technology and knowledge were adopted, but the Buddhist political theory was kept untouched. The reform process was assisted by Buddhism which explained modernization as part of the Buddhist king's traditional duty. Thus, Thailand's modernization happened without secularization.

The most serious challenge to Buddhist constitutionalism was the 1932 Democratic Revolution that ended the absolute monarchy. The revolution was the low point of Buddhist kingship that could have ended it for good. Nonetheless, the People's Party was willing to compromise. It introduced a democratic constitution, elections and human rights, while the king became a constitutional monarch, with only symbolic status and very limited power. Unfortunately, the democratic initiative collapsed within 15 years. The following period of military dictatorship, aided by the Cold War politics, fostered the resurgence of Buddhist constitutionalism. The modern dhammaraja was portrayed as a pious and benevolent ruler in contradiction to elected politicians who were seen as corrupt and selfish. This moral high ground made King Bhumibol the stabilizing figure of very volatile and unstable democracy during 1980s to 1990s.

In 1997, the liberal camp launched another attempt to consolidate Thailand's democracy. The 1997 Constitution focused on strengthening rights and liberties, empowering public participation, and the rule of law. The 2006 coup, and subsequently the 2014 coup, that were

supported by the conservatives were evidences that Buddhist and liberal democratic constitutionalisms failed to coexist peacefully. The following decade was all about dismantling the democratization project. But liberalism and democracy would not wither easily. A significant portion of Thais are still advocating for another round of democratization. The ongoing political crisis in Thailand is the fall-out from incompatibility between the two forces.

Ascertaining the essence of what traditional Thai Buddhist constitutionalism is, and how it poses an obstacle to liberal democratic constitutionalism, this section, the very final part of the dissertation, asks if Thai Buddhism can reinvent itself to bridge the ideological gap between its current theology and the universal norm. Religious tension is only one of the many symptoms of that incompatibility when the two traditions collide. Buddhism becomes a challenge, or even a hindrance, to Thailand's democratization. It justifies an arbitrary use of law, human rights abuses, and authoritarian rule. Can – or must – Buddhism retreat into the confined private sphere of the individual and eventually become obsolete?

Clearly, should Thai Buddhism choose to reconnect with the modern world, some work must be done. An extensive ideological overhaul might even be needed. This section sets the stage for further research on this task. Thai Buddhism Reform began as early as when King Mongkut met Christian missionaries. Realizing that changes were coming, he initiated reform. However, such reform was limited to Buddhism as religion, for example, the study of the Pali canon, reinterpretation of scriptures, and the sangha administration. There were no reforms concerning Buddhist political ideology. Today, modernisation and westernisation have arrived and settled in, but Buddhist intellectuals lag behind. How should Buddhist scholars identify new ways to synthesize a new type of constitutionalism? Can there be a Buddhist liberal democratic constitutionalism?

Buddhist liberal democratic constitutionalism is not impossible. A liberal state need not be strictly secular. It does not have to sever all ties with religion. There are strands of liberalism that allow for religion in the public sphere. Liberal egalitarianism, for example, differentiates between the kind of religion that the state must avoid and the kind that it can embrace.¹ It must abandon some aspects of that religion, leaving only some that are compatible with liberalism. Thus, a religion is acceptable as long as the state satisfies the minimal criteria to be liberal,

¹ Cecile Laborde, *Liberalism's Religion* (Harvard University Press 2017) 150.

namely, that a reason behind any state law must be accessible to the public, religious as well as dissidents and non-believers; that the law does not infringe on personal liberty by forcing itself on those who ethically oppose it; and that the law respects equal citizenship.² Then, the state can even establish an official religion, promulgate religious-inspired laws, or have religion in a school curriculum, without violating the freedom and equality of anyone. However, in order to satisfy the notion of minimal liberalism, Thailand must forge Buddhist constitutionalism anew. At least, Buddhism must reconcile itself with human rights, emphasize equality among women and men, and support a limited government under a written law. Most critically, it must rethink the definition of being a Buddhist state.

Comparative studies of constitutional law show a spectrum of possibilities for keeping religion as part of a liberal state. There are numerous large-scale surveys on categorizing state-religion relationship models. Looking for the best model to advance religious freedom, these works demonstrate that a number of countries are able to guarantee religious freedom while honoring their religious identity; they neither totally reject religion, as some socialist dictatorial states do, nor uncritically embrace one faith so as to become a theocratic polity. Among them, Temperman recognizes an acknowledgement model which is subtler than positive identification. Religion is acknowledged for its historical role or predominant status. Acknowledgement may come in the form of the recognition of God in a constitution or by other religiously-derived symbols.³ Moving further away from positive identification is accommodation and even non-identification. An accommodative state provides support to religions indiscriminately.⁴ Accommodation may come in the form of direct political representation for religious delegates, advisory roles for churches, financial aid, or other forms of cooperation.⁵ Non-identification refers to neutrality. A non-identification state avoids showing any signs of preferential treatment of a particular religion.⁶ Another comprehensive survey is that by Rex Ahdar and Ian Leigh. In addition to the establishment of state religion, they identified the pluralist model which recognizes the importance of religion in citizens' lives. Thus, the state chooses to embrace all religions even-handedly in the public sphere. Society is full of equally autonomous and independent spheres of religious and non-religious institutions which work together for the common good. In principle, the government then has

² *Ibid*, 151-159.

³ Temperman, *State-Religion Relationship and Human Rights Law* 73-90.

⁴ *Ibid*, 94.

⁵ *Ibid*, 94-103.

⁶ *Ibid*, 103.

to pay equal respect to all groups.⁷ Even an establishment can be *de facto* or *de jure*, depending on the degree of intimacy between the two entities. Establishment could be *de jure*, formal⁸ and symbolic or *de facto*, deep and complex.⁹ *De facto* establishment of a state religion is often a matter of tradition combined with the state's strong moral commitment to protect the spiritual welfare of the nation. The last work to be included here is that of Ran Hirschl. His model of a weak religious establishment is most common in European countries with Protestantism as their national church. However, the establishment is largely ceremonial. In Germany a weak establishment means several religious communities are designated as public corporations and thus deserve state support for their social services.¹⁰ These models of a 'thin' or 'shallow' establishment, as opposed to a 'thick' or 'deep' establishment that Thailand is heading towards, are drawn from Europe and East Asia. They serve as a reminder that a balance between liberalism and religion is possible.

The task is not unique to Buddhism. In the de-secularized age, other religious traditions have been on similar quests, as the previous paragraph has shown, from which Thai Buddhism might be able to learn.¹¹ However, a new constitutional relationship requires a new interpretation of religious doctrine. It is necessary that Thai Buddhism broaden its horizons. For example, the Roman Catholic Church's view on human rights is well advanced after the Vatican II Council shifted the Church's attitude.¹² It calls for respect for human dignity, and the state to help its citizens, especially the marginalized. This change does not mean that the two traditions, of human rights and Roman Catholicism, will align perfectly. There is still much to discuss about autonomy, truth, and responsibility but at least the Roman Catholic tradition is open to further dialogue. Meanwhile, scholars of Islamic legal tradition are trying to find a non-secular, yet non-theocratic, solution. There are many works that try to offer a rights-friendly version of Islamic law. Looking for new possibilities, one solution is to untangle the religious law-making structure from the lay government in the hope that a more independent body might be able to produce laws and ordinances which accord to various schools of faith.¹³

⁷ Ahdar & Leigh, *Religious Freedom in the Liberal State* 110-111.

⁸ *Ibid*, 104.

⁹ *Ibid*, 105.

¹⁰ Ran Hirschl, *Constitutional Theocracy* (Harvard University Press 2010) 29.

¹¹ See Thomas Banchoff & Robert Wuthnow, 'Introduction' in Thomas Banchoff & Robert Wuthnow (eds) *Religion and the Global Politics of Human Rights* (Oxford University Press 2011).

¹² Christopher McCrudden, "Legal and Roman Catholic Conceptions of Human Rights: Convergence, Divergence, and Dialogue" (2012) 1 *Oxford Journal of Law and Religion* 185.

¹³ Khaled Abou El Fadl, *Constitutionalism and the Islamic Sunni Legacy*.

Another solution is to think of a religious tradition from a different perspective. Israel has been struggling with the constitutional clause describing it as a Jewish state, the only Jewish state in the world. It has to find a balance between the two constitutional mandates of being Jewish and democratic.¹⁴ As Jewishness denotes multi-faceted qualities, ethnicity, religion, and culture, the term is open to opportunities to choose a more democratic choice. Jewishness as heritage, symbol, and language, though religious, is acceptable as it still respects rights of the non-Jewish minority.¹⁵ This exercise can encourage Thai Buddhism to redefine being Buddhist. Can Thailand discard some aspects of Buddhism while keeping others?

In addition to the rich examples from other religious traditions, is there an answer within the Buddhist tradition? Matthew Walton's study shows Buddhism's plasticity to support a wide range of ideologies, from communism, to imperialism, to democracy.¹⁶ One can go deep, digging into the past. The state has been supporting the current version of Buddhist constitutionalism because it justifies a particular type of regime, which descended from the traditional absolute monarchy. In 1932, however, the People's Party ended such tradition and introduced democracy. That was also when the new interpretation of Buddhist constitutionalism was spawned. The most prominent member of the People's Party was Pridi Banomyong whose understanding of Buddhism radically differed from traditional notions. He employed the Buddhist principle of non-permanence, *anicca*, to justify his abolishment of the absolute kingship; that society naturally evolves over time, from the primitive, to the feudal, to the absolute monarchy, and eventually to a democratic society.¹⁷ He also re-interpreted the concept of Buddhist utopia, the period when the next Buddha, Mettrai, would arrive and all dhamma would be restored. Pridi argued that it was possible for men to create that utopia without waiting for the Mettrai Buddha if men are liberated and equal.¹⁸ Pridi firmly believed in the state's role in providing welfare, as the ideal Buddhist king would tend his subjects with fair distribution of resources.¹⁹ He further advocated strongly for *dhammavijaya*, victory by

¹⁴ See Gila Stopler, 'Religious Establishment, Pluralism, and Equality in Israel - Can the Circle be Squared?' (2013) 2 Oxford Journal of Law and Religion 119.

¹⁵ Daphne Barak-Erez, 'What Does It Mean for a State to be Jewish' in Christine Hayes (ed) *The Cambridge Companion to Judaism and Law* (Cambridge University Press 2017) 365.

¹⁶ Matthew Walton, 'Buddhism, Nationalism, and Governance' in Jerryson, *Oxford Handbook of Contemporary Buddhism*.

¹⁷ Pridi, *Impermanence of a Society* 6-13.

¹⁸ Phra Chanipit Surasak, นายปรีดี พนมยงค์: แนวคิดและบทบาททางพุทธศาสนา [*Pridi Banomyong: His Thought and Role Concerning Buddhism*] (MA Thesis, Thammasat University, 2007) 53-56; Suraphot Taweesak, “ปรีดี พนมยงค์ กับ การตีความพุทธศาสนาสนับสนุนประชาธิปไตย” [*Pridi Banomyong and Democratic Interpretation of Buddhism*] *Prachatai* (16 February 2012) at <<https://prachatai.com/journal/2012/02/39286>> accessed 19 September 2019.

¹⁹ Suraphot, *Pridi Banomyong*.

dhamma, by avoiding violence in conflict resolution.²⁰ Most importantly, Pridi experimented with the Sangha administration by restructuring it according to the separation of temporal power. His Sangha Law tested how monastic republicanism, which many Buddhists were proud of, would play out in practice.²¹ It is clear that Pridi approached Buddhism from the socialist democratic point of view. His works demonstrated how Buddhism might be re-interpreted to be more compatible with liberal democratic constitutionalism. Pridi was not the only member of the People's Party who read Buddhism in a new light. Other members of the 1932 Revolution shared the same inspiration that Buddhism could lead to political liberation, and a fair economic and social development.²² Unfortunately, the resurgence of the royalist conservatives ended this brief but exciting experiential period.²³ Pridi's Buddhist legacy is understudied and thus revival of interest in his lifework may be useful to the present task.

In more recent times, new Buddhist movements sprang up in the nineteen-eighties. Again, the blossoming of fresh ideas coincided with the liberalization of politics after the Cold War ended. As they all tried to break away from rigid orthodoxy, some of them, such as Santi Asoka or the Bhikhuni movements offered new readings on Thai Buddhism. Santi Asoka became independent from the official Sangha. Bhikhuni had to challenge the archaic understanding of vinaya to assert women's rights to ordination. It is worth examining whether these marginalized Buddhist groups may hold alternative theories of governance, law, or human rights.

One can search further afield too. This research focuses on Thai Buddhism, a branch of Theravada. It touches very little upon the other main tradition, that of Mahayana of the East Asian countries. The story of Mahayana Buddhism follows a completely different trajectory. When Buddhism entered the region, it was brought under the patronage of rulers in China, Japan, and Korea. However, eventually, Buddhism lost its prestige. Mahayana had to cope with a number of pressures; competition with other faiths, i.e. Shinto and Daoism, and later Christianity; suppression from Communism, especially during the Cultural Revolution, or Imperialism; and lastly, modernization.²⁴ These countries became secularized for different reasons, i.e. democratization as in Japan, Taiwan, and South Korea, or Communism as in

²⁰ Phra Chanipit, *Pridi Banomyong: His Thought and Role Concerning Buddhism* 32-34.

²¹ *Ibid*, 87-92.

²² Suraphot Taweesak, จากพุทธศาสนาแห่งรัฐสู่พุทธศาสนาที่เป็นอิสระจากรัฐ [*From State Buddhism to Buddhism Free From State*] (Kled Thai 2017) 103-107.

²³ Jackson, *Buddhism, Legitimation, and Conflict* 79-82.

²⁴ In general, see Chapters 4,5, and 6 on Buddhism in China (Taiwan included), Korea, and Japan, respectively, in Michael Jerryson (ed.) *The Oxford Handbook of Contemporary Buddhism* (2017 OUP).

China. The constitutions of China, Japan, South Korea, and Taiwan grant no special place for Buddhism. Buddhism remains culturally important but not politically. In this pluralistic world, it is treated no differently from other religions. Monks belong not to a special class as in Theravada Southeast Asia, but they are ordinary citizens. No longer is there a single entity to control the sangha. Many large Buddhist organizations are led by lay persons. Do these reflect a more egalitarian thinking? How does Mahayana Buddhism respond to such changes in its socio-political status? A comparative study might provide some clues and insights useful for Theravada's problem.

Yet one thing is certain. New ideas cannot be born out of a monopoly position. When Buddhism resides under the state's patronage, especially when the mutual relationship becomes increasingly intimate as it currently is, the result is a localized, amicable, and submissive relationship with the state. The understanding of Buddhist constitutionalism is therefore dictated by the state whose survival is at stake. Unsurprisingly, it discourages more radical interpretations and focuses on maintaining the undemocratic *status quo*. However, if Thai Buddhism is ever to find modern relevance, it must be willing to embrace doctrinal transformation, synthesising liberal democratic constitutionalism values into its conservative teaching.

Glossary

Aggati	prejudice
Anicca	impermanence
Arahat	a monk who reaches enlightenment or sainthood
Asarnhapuja	the remembrance of the first monk, falling into a fullmoon of eighth month of the lunar calendar
Barami	perfection, charisma, or authority
Bhikkhu	a Buddhist monk
Bhikkhuni	a female Buddhist monk, often confused with Mae Chi which is commonly translated to a nun
Bodhisatta	a person who is determined to make merit to become the next Buddha
Bun	merit
Chakkavattin	a wheel-turning monarch, who conquer the world and defeat other lesser monarchs through his barami, considered a temporal equivalent of Buddha
Dasavidharajadhamma	ten royal virtues for a king, including <i>dana</i> (charity), <i>sila</i> (morality), <i>pariccaga</i> (altruism), <i>ajjava</i> (honesty), <i>maddhava</i> (gentleness), <i>tapa</i> (self-controlling), <i>akkodha</i> (non-anger), <i>avihimsa</i> (non-violence), <i>khanti</i> (tolerance), and <i>avirodhana</i> (uprightness), also totsapitrajadhamma
Dana	donation or giving, one of the ten royal virtues
Datok	an expert in Sharia law
Devaraja	the theory of divine kingship in Siam
Dhamma	the natural law, ultimate rule of being, and the teaching of Buddha
Dhammaraja	a monarch who rules in accordance with the Buddhist notion of ideal kingship, in general, the ten royal virtues
Dhammasastra	ancient legal cult of Southeast Asia
Dhammavijaya	a victory by benevolence, not by violence
Gothama	the present Buddha
Hiriotappa	shame over moral transgression
Jataka	stories of Buddha's past lives

Kod mhai	a thai word for a written law
Mahasamata	the great elect, the first monarch who was elected to rule in order to restore peace and order
Mahayana	the school of Buddhism that is practiced mostly in East Asian countries, the characteristic of it emphasizes on Bodhisatta to help the greatest amount of beings, the great vehicle across the sea of sufferance
Makhapuja	the remembrance of Buddha's birth, enlightenment, and death, falling into a fullmoon of the sixth month in the lunar calendar
Mandala	sphere of power
Mettrai	the future Buddha who will arrive at the end of this eon
Pali	an ancient language from India, used almost exclusively in Theravada Buddhism
Parajika	the most serious crimes in Buddhism: sexual intercourse, theft, homicide, and falsely claiming to possess mythical power, a proprietor of which will immediately lose his monk status
Parian	a title for a monk who passes the Pali examination
Phra	a title for a monk
Pondok	A traditional Islamic religious school
Rajadhamma	dhamma for the monarch
Rajasastra	king-made law
Sakdina	a traditional system of social ranking
Sangha	a gathering of monks, the Sangha , however, refers to the official order of Thai Buddhism
Sangha Raja	the supreme partriarch overseeing the official Thai monasti order
Sasanuphathamphok	the patron of religions
Sila	precept
Sima	a boundary that separates the monastic territory from the outside, which is a prerequisite for validity of any Buddhist ritual
Tadika	a local Islamic religious schhol for young children
Theravada	the school of Buddhism that is practiced mostly in Sri Lanka and Southeast Asia, known for its strict interpretation of teaching and practices
Tipitaka	books of Buddha's teaching

Uppajja	a preceptor, a learnt senior monk who is authorised to ordain others
Vihara	a chapel
Vinaya	monastic legal code
Visakapuja	the remembrance of Buddha's most important sermon to 1,250 arahat monks, falling to a fullmoon of the third month in the lunar calendar
Wat	a temple, in a legal sense, a fully authorized, with the blessing from the king

Chronology

1239 (?)	King Sri Indraditya founded the Sukhothai kingdom.
1279 (?)	King Ramkhamhaeng ascended the throne.
1347	King Lithai crowned himself the first great Buddhist king.
1438	Sukhothai was annexed to the Ayutthaya Kingdom.
1688	The coup broke out against King Narai, expelling Catholic priests from the kingdom.
1767	Ayuthata failed to the Burmese army.
1767	King Taksin founded the Thonburi kingdom.
1782	King Rama I founded the Chakri dynasty of Bangkok.
1788	King Rama I organized a recension of Tipitaka
1805	King Rama I ordered a compilation of the Three Seals Code.
1839	Prince Mongkut established the Thammayuttikanikaya school of Buddhism.
1851	Prince Mongkut was crowned King Rama IV.
1891	King Rama V began the modernization of the Thai legal system.
1902	King Rama V promulgated the first Sangha Law, establishing the official order of Thai Buddhism.
1909	The Anglo-Siam Treaty divided the Malay Peninsula and the Sultanate of Patani was handed under Siam's control.
1932	The People's Party ended the absolute monarchy of King Rama VII, introducing Thailand's first modern constitution.
1941	The second Sangha Law was promulgated.
1946	The military junta staged a coup, ending the 15 year period of democracy initiated by the People's Party, and beginning the period of military dictatorship.
1962	Field Marshall Sarit Thanarat passed the 1962 Sangha Law.
1970	Dhammakaya Temple was founded.

1972	On 14 October, the deadly crackdown of university students, who were protesting for democracy, backfired. The military junta relented its power, the beginning of the short-period of liberalisation.
1975	Santi Asoke was created.
1976	Right-wing militias massacred left-wing student activists on 6 October, an incident marked the return of the conservative.
1992	Black May Uprising ended the long era of military dictatorship.
1997	The 1997 Constitution, the People's Constitution, came into effect, the beginning of Thailand's democratization.
2001	Thaksin Shinawatra became the prime minister.
2004	Violence broke out in the Deep South region.
2006	The first anti-Thaksin Shinawatra demonstration was held before Thaksin was ousted by the 19 September Coup.
2007	The 2007 Constitution was promulgated.
2008	Samak Sundaravej, Thaksin's proxy, won the general election, prompting another anti-Thaksin demonstration until the Constitutional Court dissolved Thaksin's party, People's Power Party. The Democrat Party, the representative of the anti-Thaksin conservative wing, became a government.
2010	A mass protest by Thaksin's supporters, the Redshirts, broke out in Bangkok but subsequently was cracked down.
2011	Yingluck Shinawatra, Thaksin's youngest sister, won the general election, becoming the first female prime minister.
2013	The Supreme Patriarch, the Sangha Raja, passed away.
2014	On 22 May, Prayuth Chan-ocha staged a coup against Yingluck Shinawatra, abolishing the 2007 Constitution.
2016	King Bhumibol passed away on 13 October. King Vajiralongkorn succeeded the throne.
2017	King Vajiralongkorn signed the 2017 Constitution into effect. Dhammakaya Temple was raided. The amendment to the 1962 Sangha Law placed the appointment of Sangha Raja under the king's authority.
2018	Another amendment placed an appointment of the Sangha Council to the king's power.

2019

Prayuth Chan-ocha won the general election, transforming the traditional military dictatorship into an elected government.

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